

**JUSTICE KENNEDY
AND HOBBY LOBBY**
ADAM J. WHITE

the weekly

Standard

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THROUGH A GOOGLE GLASS, DARKLY

Matt Labash,
guinea pig

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Uncivil Disobedience

For the sake of argument, THE SCRAPBOOK is willing to concede that it is possible that Cliven Bundy, the Nevada rancher, ought to be allowed to graze his cattle on federal land in Nye County. And that protecting the desert tortoise as an endangered species on that same federal land is no good reason to impose a fee for grazing livestock. Reasonable people can disagree about these issues, and will do so.

But in the United States of America, since 1789, we have had ways of settling these disputes. We have a judicial system that gives citizens due process and the right to seek redress for grievances. We have a political system that encourages citizens to elect people to public office who will pass laws we like, or rescind laws we don't like, and uphold the laws they have enacted. We also have a Bill of Rights in our Constitution, the very first item of which protects the freedom of speech, allowing supporters and critics of laws to influence public opinion and government. All of these remedies have been, and remain, available to Cliven Bundy.

Twenty years ago, the federal government, which owns the land on which Bundy grazes his 900 cattle, decided to impose a grazing fee. Bundy opposes that fee, has consistently refused to pay it, and the federal Bureau of Land Management now claims that he owes \$1 million in unpaid fees. Bundy has challenged the grazing fee in federal court—indeed, has challenged the federal government's title to land in Nevada—and has consis-

tently lost. Sixteen years ago, a federal judge issued a permanent injunction against Bundy, ordering the removal of his cattle. Bundy appealed that ruling to the Ninth U.S. Circuit Court of Appeals, and lost again. Last August, a federal court gave Bundy 45 days to remove his cattle, and in October, a federal district judge ordered Bundy not to “physically interfere with any seizure or impoundment operation.”

This does not sound to THE SCRAPBOOK like the dread hand of tyranny, in Nevada or Washington, oppressing an innocent farmer, or pushing some law-abiding citizen around. It sounds, instead, like a rancher gaming the system to his own financial advantage, and disguising his scheme in populist rhetoric: refusing to pay a tax which others must pay, and “tying up the courts”—for two decades!—as he continues to ignore the law. Far from acting in an arbitrary or capricious manner, the federal government has shown patience and forbearance in the face of lawlessness that customarily lands people in jail. It is worth noting that Bundy's rancher-neighbors and the Nevada Cattlemen's Association, who contend with the same federal policies, offer him little support.

Bundy has exercised his First Amendment right to plead his case publicly and inflame his admirers. And inflamed they have been: A few hundred people from around the country converged on Nye County, Nevada—many armed and brandishing weapons—to disrupt the government's attempt to enforce the law,

taunting and attacking agents dutifully carrying out the orders of a federal court. Last week, fearful of violence, the BLM suspended its roundup and withdrew from the area.

This is no victory for anyone other than Bundy and, THE SCRAPBOOK hopes, a temporary one at that. There is a term to describe the people who surround him, and it isn't “militia.” The word is “mob.” And what this mob has practiced is not civil disobedience but armed provocation of a democratic government which has afforded Cliven Bundy every right and privilege as a citizen. One of Bundy's supporters boasted to the press that “we were actually strategizing to put all the women up at the front.” This is the same spirit that animates people who attack firemen during riots, or opposed school integration with violence in Little Rock, Arkansas. In that case, 57 years ago, President Eisenhower was obliged to send the 101st Airborne because, as he said, “mob rule cannot be allowed to override the decisions of our courts.”

What was true then remains true today. Cliven Bundy is no hero of any kind. No conservative would pick and choose the laws he intends to obey, defy the rest, and challenge the rule of democracy with guns. No hero would adopt the terrorist's tactic of placing innocents in harm's way. Any fool can pick up a weapon and aim at an officer of the law; the moral power of civil disobedience lies in the willingness to defer to the law and accept punishment on principle. ♦

Decline of Debate: The Sequel

Last week the website for the *Atlantic* ran a highly instructive report about the extent to which the progressive worldview now dominates the university. The most recent conquest: college debate competitions.

Collegiate debate—the organized,

full-contact version, not the dorm-room bull session—has long been the domain of earnest apple-polishers. The kind of strait-laced students who color inside the lines, do all their homework, and look down on the unwashed masses with their A-minus averages. But in recent years, this white-bread subculture has been embracing “diversity,” with predictable results.

At the Cross Examination Debate Association Championships in March, the final match featured two pairs of African-American debaters. Progress! The debate centered around a resolution asking whether or not the president's war powers should be restricted. The contest was won by the duo from Towson State University, Ameena Ruffin and Korey Johnson, who chose to

argue the side of . . . well . . . it's hard to say. Here's the *Atlantic's* formulation: "Rather than address the resolution straight on, Ruffin and Johnson, along with other teams of African-Americans, attacked its premise. The more pressing issue, they argued, is how the U.S. government is at war with poor black communities."

This may sound outré, but Ruffin and Johnson were the traditionalist debate team. Their opponents, Rashid Campbell and George Lee from the University of Oklahoma, were more *au courant*. Again, here's the *Atlantic*:

Over four hours, the two teams engaged in a heated discussion of concepts like "nigga authenticity" and performed hip-hop and spoken-word poetry in the traditional timed format. At one point during Lee's rebuttal, the clock ran out but he refused to yield the floor. "F— the time!" he yelled. His partner Campbell, who won the top speaker award at the National Debate Tournament two weeks later, had been unfairly targeted by the police at the debate venue just days before, and cited this personal trauma as evidence for his case against the government's treatment of poor African-Americans.

This evolution in debate isn't brand new. Last year THE SCRAPBOOK noted how Emporia State University's African-American debate tandem had won the National Debate Tournament by ignoring the motion—"Resolved: The United States Federal Government should substantially reduce restrictions on and/or substantially increase financial incentives for energy production in the United States." Instead, they rapped about the musical *The Wiz* and made an explicit appeal to the judges to award them victory as a statement in favor of diversity and against white privilege.

What is new, however, is the attempted pushback from the more traditional debate powers. The debate coach at Northwestern, Aaron Hardy, dared to suggest that this Newspeak debate tactic might be problematic and that there ought to be a place in college debate for teams which, for instance, engaged the resolution, argued

facts and data, and abided by rules on time and format. His suggestion was to carve out a little area for what he called "policy only" debates.

Hardy's suggestion was not well received. According to the *Atlantic*, 14 teams signed up for the "policy only" tournament. But those teams had the misfortune to come from elite schools and were predominately white students. The "policy only" debate was deemed racist and canceled.

At the risk of being puckish, you can understand the objection: Why have separate but equal debates? And while one has some sympathy for Hardy and the other traditional debate do-gooders, they seem to be pining for a format, and a world,

that has already passed. Have a look at Twitter. Or MSNBC. Or the *New York Times*. Or Attorney General Eric Holder. Or any of the rest of the grievance-mongering chattering class for whom the unbeatable trump card these days is discerning "racism" in their opponents. Debate isn't what it used to be. The college kids might as well learn this brute fact sooner rather than later. ♦

Low Voltage

Last week, *National Journal* reporter Major Garrett provided an interesting explanation for the White House's obsession with promoting a



RAHREZ

dubious statistic on the alleged “pay gap” between men and women. The White House has repeatedly claimed that women earn 77 cents for every dollar that men earn. Such “war on women” rhetoric has no doubt proved inspiring to many single women, the Democrats’ most crucial voting bloc. (Republicans still enjoy an advantage among married women.)

However, as has been repeatedly pointed out, once you control for a number of confounding factors in the data, including the degree to which women drop in and out of the workforce to attend to marital and parental duties, the pay gap all but evaporates. Even the usually credulous D.C. press corps was scratching their heads over the White House’s misleading rhetoric. The *Washington Post*’s Ruth Marcus—not exactly the face of conservative opposition to Obama—called the White House’s use of the stat “revolting.” But as Garrett explains, the Obama administration deliberately sought to create controversy:

[The White House was] desperate to inject the issue into the political bloodstream and amplify otherwise doomed Senate Democratic efforts to make it easier for women to sue and win damages for workplace pay differences. The controversy that played out on front pages, social media, TV, and radio did just that.

This is the White House theory of “Stray Voltage.” It is the brainchild of former White House Senior Adviser David Plouffe, whose methods loom large long after his departure. The theory goes like this: Controversy sparks attention, attention provokes conversation, and conversation embeds previously unknown or marginalized ideas in the public consciousness. This happens, Plouffe theorizes, even when—and sometimes especially when—the White House appears defensive, besieged, or off-guard.

While the moniker “stray voltage” may make the concept sound exciting to political reporters, let’s call this what it is: agitprop to advance an agenda. If the “pay gap” was a previously unknown or marginalized idea,

that’s because it deserves to be marginalized. In this regard, we’re sure that “if you like your health insurance plan, you can keep your health insurance plan” was just another example of “stray voltage.” Can you blame the president? How else was he supposed to convince people a federal takeover of health care shouldn’t remain a marginalized idea?

Presidential adviser Dan Pfeiffer insists the “theory ascribed to us is not ours (or Plouffe’s) and wasn’t applied to this debate,” despite Garrett citing “a top White House adviser” as a source in his story. If the Obama administration frequently appears “defensive, besieged, or off-guard,” maybe Occam’s razor is a better concept than “stray voltage” for understanding why the leader of the free world is ignorant of the facts underlying his own policies and rhetoric.

But if some in the White House think that being portrayed as mendacious is preferable to being seen as incompetent, *THE SCRAPBOOK* encourages them to go ahead and make that argument. With that much stray voltage flying around, it’s only a matter of time before voters start to feel shocked, and burned. ♦

Correction

We mistakenly described General Ulysses S. Grant’s forces at Shiloh (“Grant Takes Charge,” March 31/April 7, 2014) as “huddled in defensive positions with their backs to the Mississippi River.” It was, of course, the Tennessee River. Our apologies for the blunder and thanks to the many careful readers who wrote in to correct the record.

Author Geoffrey Norman emailed *THE SCRAPBOOK*: “My father was from Tennessee and grew up not far from the Shiloh battlefield, which I saw for the first time as a young boy. Which makes it more baffling to me that I did not recognize the error in the many revisions this article went through. You can explain to readers that the writer had just temporarily run out of brains.” ♦

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Bubba's Grits

The other Sunday in Georgia, Bubba Watson won the Masters, which is only the most prestigious golf tournament in the world. And this was the second time in three years for him. It was a very big deal, then, which Watson celebrated by taking his wife and a few friends out for dinner at his favorite restaurant.

That would be Waffle House.

It is difficult to know from reading the news accounts exactly which of some 1,700 Waffle House restaurants Watson went to. But it was in Georgia. If he'd won the U.S. Open, and it had been played at, say, Pebble Beach, then Watson would have been out of luck and reduced to eating sushi or some kale-themed creation at a thousand dollars a plate. There are no Waffle House locations outside of what can loosely be called the South. Precious few, anyway.

But in the South, you almost have to search for an exit from an interstate where you do not see the familiar yellow sign with black letters, announcing to all who are in the know that here be good, cheap, high cholesterol eats. You don't go to Waffle House thinking salads and lean chicken. I once sat at a Waffle House counter, outside of Tallahassee on the Sunday morning after an FSU game, and watched the man next to me eat three pork chops, four eggs over easy, a serving of grits, and a couple of biscuits. Nobody in the place, on either side of the counter, seemed to think there was anything remarkable about this, and the man walked, unassisted, to

his car after he had cleaned his plate.

I was eating at Waffle House that morning because, back in those days, that's where I always—and I mean always—ate breakfast when I was on the road. And I was on the road a lot.

I remember the occasional conversation, back then, about the appeal of Waffle House. Someone of my acquaintance described it for me as “comfort food for truckers.” Nice line

allowed me in those days on the road, when I was doing vastly softer work, to tell myself that at least I was eating as my more robust ancestors had.

Eventually, I found myself spending less and less time on the road and more and more of it in venues where there was no Waffle House. That is to say, above the Mason-Dixon line. And, anyway, I was trying to eat the way we are all supposed to eat and enduring it. To my surprise, life without grits (and plenty of butter and salt) seemed actually worth living. There were times, I suppose, when I suspected my Waffle House days were behind me.

But I happened to be down South when Bubba won the Masters. And not just anywhere in the South, but less than an hour's drive from his hometown of Bagdad, Florida, which is just a little way from Pensacola and a long way from the 21st century. It is a sweet little town of spreading live oaks and stately pines, full of old homes built of heart lumber milled to tongue and groove, with azaleas and wisteria blooming lushly all around. It's as pretty, in its way, as the vastly more manicured grounds of Augusta

National that Bubba had conquered two days before my wife and I did the half-hour tour of his hometown.

After which, we went directly to the nearest Waffle House, where we both ordered my usual. I'm a traditionalist, that way. But I had the sense that this little homage to Bubba might be my last visit to Waffle House for a while, and maybe for longer than that. So I did something I'd never done before. I ordered a waffle.

Like the eggs, the sausage, the grits, and the biscuits, it was excellent.

Just as Bubba and I had known it would be.

GEOFFREY NORMAN



The post-Masters selfie posted online by Bubba Watson, taken as he celebrated with his wife and friends

but insufficiently regional. I subscribed to the theory that breakfast, in the recently departed rural South, was always the most important and ample meal of the day. I can dimly remember how, in my sawmill family, breakfast was eaten well before the sun rose and it was meant to fuel the men the way sawdust and scrap lumber fueled the mill's boilers. Eggs, grits, ham—very salty—biscuits—very buttered—and lots of bitter black coffee. Then off for a morning in the woods or at the mill, amid the screaming machines. It was hard and dangerous work, and breakfast helped fortify you for it.

Nice theory, I suppose, and one that

2014 ≠ 2016

Polls are overrated, but they can be still instructive. So what's to be learned from a Fox News survey of 1,012 registered voters conducted April 13-15?

Republicans are in pretty good shape for this fall. President Obama is unpopular. He's got a 42 percent job approval rating, compared with 51 percent disapproval, and his personal favorable/unfavorable rating isn't much better at 45/51. The Republican party has gained ground in recent months and is now as well regarded as the Democratic party, with both about even in approval/disapproval. What's more, other polls show the generic ballot about even (and Republicans almost always outperform the generic ballot on Election Day), and state by state surveys confirm that the Republicans could well win control of the Senate and pick up some additional House seats.

So 2014 looks fine; 2016 doesn't.

This is despite the fact that Hillary Clinton, the overwhelming favorite for the Democratic presidential nomination, has only a 49-45 favorable rating in the Fox poll, down from 56-38 last June. This result (and similar findings in other surveys) suggests she's not an unbeatable candidate. When Barack Obama won the last open-seat presidential race in 2008, his favorable rating in the Fox poll on Election Day was 57-39. So 49-45 isn't daunting.

But it's good enough to beat any of the Republican candidates tested in the Fox News poll. In fact, Chris Christie, Jeb Bush, Rand Paul, and Ted Cruz all have net unfavorable ratings. And so Clinton beats them all by at least eight points. Other surveys also have Clinton defeating various possible Republican nominees quite easily.

At the moment, then, Republicans seem likely to win in 2014 and to lose in 2016. The good news is that the 2014 election comes first, and the Democrats don't seem to have much chance to change this year's dynamic. Republicans do have the time and opportunity to change the dynamic of 2016. The bad news is the most likely Republican presidential candidates seem to have little inkling of how to do so. An ever more intensive clobbering of Hillary Clinton will reach a point of diminishing returns. It's quite possible, even likely, that a majority of Americans will be unenthusiastic by November 2016 about the prospect of a Clinton presidency. But it seems very unlikely that critics will succeed in disqualifying her, in the eyes of a majority of voters, as a potential president.

Which means a Republican is actually going to have to *win* the presidency in 2016.

It's been a long time since a nonincumbent Republican has actually *won* a presidential election. In 2000, George W. Bush lost the popular vote. In 1988, Roger Ailes and Lee Atwater succeeded in demolishing Michael Dukakis, and George H. W. Bush was able to secure what was in effect Ronald Reagan's third term. In 1980, Ronald Reagan ran against a deeply unpopular incumbent, and in 1968 Richard Nixon defeated the incumbent vice president of a failed Democratic administration. In 1952, Americans liked Ike.

We don't have another Ike. Probably the best model for 2016 is Reagan in 1980. In addition to benefiting from Jimmy Carter's problems, Reagan did run on a big and bold governing agenda at a time the country sensed it needed one.

Do Republicans have such an agenda today? Not yet. Do they have candidates who are in search of such an agenda? Not clear. It's

not merely, as is often said, that the Republican presidential field lacks a Reagan. It's that the Republican party seems to lack leaders who even want to be a Reagan. Reagan was a full-spectrum conservative. But even more important, he was a full-spectrum candidate.

Such a candidate would explain how he would stand up to Vladimir Putin, and he would stand up for Ayaan Hirsi Ali. He would not just offer a critique of Obamacare but would set forth an alternative to it, and he would also be championing alternatives to other features of nanny-state liberalism. He would embody the best impulses of the Tea Party while channeling the sentiments of Middle America. He would seek not to contain Obama-era liberalism but to transcend it, explaining why it should go down as some bizarre chapter in American history whose last pages are even now being written.

Every poll shows the American public, by about two to one, thinks the nation is on the wrong track. That's the track of contemporary liberalism. It's the track Hillary Clinton has diligently chugged along for her entire adult life. As president, she'd be a dutiful chaperone of further American decline. The American people deserve better. If given a real choice between an invigorated conservatism and a decadent liberalism, voters might well make the right decision. Will they be given that choice in 2016?

—William Kristol



Don't Close Your Eyes, Unionize

From 'student-athletes' to 'worker-athletes'?

BY JOSEPH EPSTEIN

The great American fraud that dare not speak its name, though anyone who owns a television set is aware of it, is college athletics. Amateur though they are supposed to be, the only thing truly amateur about them is that they do not pay the (supposed) students who play them, at least not directly.

The two great money-making college sports, of course, are football and basketball—money-making, that is, if the school has a successful program. I love that word “program,” a euphemism behind which lies a vast network of recruiting, excessive practice time, heavy travel during the school year, and coaches paid millions of dollars in the hope that they will, through the “program,” bring in many millions more.

The least-noted award in all of sports must be the Academic All-Americans. Some rare kids playing big-time college football or basketball are no doubt able to get some studying done, but only the greatest naïf would believe that for any major college athlete the classroom is remotely where the action is.

A joke chez Epstein suggests how

much better LeBron James would be had he had a solid liberal-arts education. Some of the best players in the National Basketball Association—James, Kevin Garnett, Kobe Bryant—



cut out the middleman, so to say, and went straight from high-school to the pros. Many other pro basketball players have been what is called “one and done,” meaning they left college for the pros after a single year of college competition. That year was only there to

demonstrate to the professional franchises how talented they are, and thus jack up their salary demands.

A number of years ago I gave a lecture at Clemson University, a school with major football and basketball programs. A man from the physical education and recreation department was assigned to escort me around the campus. I asked him if he had ever had any contact with William (“The Fridge”) Perry, the first famous 300-pound lineman in the National Football League, then playing for the Chicago Bears, who had earlier gone to Clemson.

“I did,” he said. “William wrote a paper for me on the use of public parks, and when I told him that the paper didn’t really sound like him, he left quietly. The next day two of his academic advisers showed up in my office to tell me that I had hurt William’s feelings. When I asked them if Wil-

liam had in fact written the paper, they allowed that he hadn’t actually written it, but he did do some of the research.” As I say, they have a strong program at Clemson.

No one talks about it, and I have never seen any statistics on the subject, but surely a preponderance of major college football and basketball players are African American. Watching the University of Wisconsin in the Final Four NCAA tournament, I mentioned to my wife that Wisconsin started four white players. “Is that,” she asked, “legal?”

In exchange for playing on a Division One school team, young African Americans get free schooling and room and board and sometimes small living allowances. (Every so often there is a far from shocking scandal when it is revealed that an

Joseph Epstein, a frequent contributor, is the author, most recently, of A Literary Education and Other Essays.

DAVE CLEGG

alumnus has slipped a few grand into the pockets of a star athlete, or bought a convertible for him.) Most of these athletes hope that their college years will serve as entrée into the NFL or the NBA, where million-dollar contracts await. Only a small number will, of course, succeed in this hope, but, what the hell, it's worth a shot. A few among the basketball players will play in Europe. Others will drop out, drift off, for the most part not in the least touched, intellectually anyway, by their few years in college.

Before last year's NFL draft, watching ESPN, I saw pictures of the players likely to go highest in the draft. Some had their shirts off; a few posed showing their biceps. I felt as if I were watching a Roman slave market, with gladiators up for sale. Multimillionaire gladiators, to be sure, but gladiators all the same. They risk their bodies for our pleasure. The feeling wasn't a pleasant one.

The money in big-time college sports isn't all cash on the barrel head from fan tickets and whopping television receipts. Successful college basketball and sports programs pay off in other ways. In 1996, the year that Northwestern University's football team went to the Rose Bowl, both student admission applications and alumni donations went up substantially. And so it must be at other schools.

In January of this year it was at Northwestern that Kain Colter, the school's graduating quarterback, came out on behalf of college athletes' unionizing. Colter's notion was that college athletes are employees, and as such deserve the rights of employees, health insurance notable among them, since college football is a dangerous sport. Northwestern University's vice president for athletics, a man named Jim Phillips, responded with a predictable barrage of clichés, congratulating Colter and those of his fellow team members who signed a petition to unionize. "We love and are proud of our students," his press release read. "Northwestern teaches them to be leaders and independent thinkers who will make a positive impact on their communities, the

nation and the world. Today's action demonstrates that they are doing so." Phillips went on to say that "Northwestern believes that our student-athletes are not employees, and collective bargaining is therefore not the appropriate method to address these concerns. However, we agree that the health and academic issues being raised by our student-athletes and others are important ones that deserve further consideration." Note, please, "student-athletes," a phrase with a truth-quotient somewhere near zero.

The response of the NCAA officials also leaned heavily on student-

As a regional director of the NLRB put it: 'The record makes clear that the employer's scholarship players are identified and recruited in the first instance because of their football prowess and not because of their academic achievement in high school. . . . No examples were provided of scholarship players being permitted to miss entire practices and/or games to attend to their studies.'

athletes. "This union-backed attempt to turn student-athletes into employees undermines the purpose of college: an *education*. [My italics, flashing neon not being available.] Student-athletes are not employees, and their participation in college sports is voluntary. We stand for all student-athletes, not just those the unions want to professionalize. Student-athletes are not employees within any definition of the National Labor Relations Act or the Fair Labor Standards Act. We are confident the National Labor Relations Board will find in our favor, as there is no right to organize student-athletes."

The NCAA's confidence was misplaced, and the NLRB found that

the college athletes do have the right to organize. The decision appears to have been based in good part on the obvious fact that they, the athletes, are in school strictly because of their athletic ability. As Peter Sung Ohr, a regional director of the NLRB, put it: "The record makes clear that the employer's scholarship players are identified and recruited in the first instance because of their football prowess and not because of their academic achievement in high school. . . . No examples were provided of scholarship players being permitted to miss entire practices and/or games to attend to their studies."

Neither Northwestern nor the Big Ten nor the NCAA accepted the decision, and all plan to appeal it. To what college athlete unionization, if finally cleared of all legal hurdles, is likely to lead is unclear. Medical protection is high on the list of the athletes' demands. Being allowed to receive money for endorsements is another agenda item. Practice hours is another possible matter of concern. Will college athletes be allowed to strike, just before, say, bowl games or the NCAA basketball tournament? Anything could happen.

As someone who invests no strong belief in the goodness of labor unions, or in the union movement, whose great period of idealism has been over for more than half a century, I find myself welcoming the attempt of college athletes to unionize. Doing so at least injects a note of reality into the deep fraudulence that has been campus athletics. Employees is what college athletes are, and to pretend that they are otherwise—that they are student-athletes or, as I used occasionally to hear Northwestern's football team described, scholar-athletes—is a lame joke. One cannot predict for a certainty whether the appeals of the NLRB decision will be heeded or not. But my best guess is that the outlook for the future is for unionized halfbacks to be crashing into the secondary and power forwards with the union label to be slam dunking during the Final Four. Dink Stover of Yale, I daresay, will be spinning in his grave. ♦

Can This Marriage Be Saved?

The Republican establishment needs the grassroots, and vice versa. **BY JAY COST**

Jeb Bush's recent musings on a possible presidential run—and his comments on immigration, rankling many in the Republican grassroots—sparked a familiar clash. Jeb, the establishment's preferred candidate, some said, could neutralize the fiery GOP base in 2016. Conservatives shot back that Jeb would depress conservative turnout, and his last name would play poorly with the general electorate.

It's a constant tension: The base is unhappy with the establishment, and vice versa. But this year, the marriage of convenience between the grassroots of the party and its donor class has emerged so battered from eight years of George W. Bush and five of Barack Obama that some wonder whether this union can or should be saved.

In fact, the divide between the two sides of the GOP goes back a long way. Partly, it reflects a universal truth that James Madison noted in *Federalist* 10: “[T]he most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society.” The establishment class of the Republican party holds property that the grassroots simply do not—disposable income high enough to facilitate political giving, sometimes on a vast scale. The grassroots have little spare cash; they have only their votes.

This economic divide is reinforced by geography and culture, with the donor class tending to live on the

coasts, in or around cities, and the base spread out across the suburbs, small towns, and rural expanses in the Midwest and South.

Furthermore, the nature of American elections—winner-take-all contests in geographically discrete jurisdictions—effectively precludes the formation of third or fourth parties, as French political scientist Maurice Duverger showed. As a result, many potentially clashing interests end up housed within our “big tent” parties, forcing leaders to find clever ways to keep potential conflicts from overwhelming shared values.

Consider the Whig party, from which the Republican party was (mostly) formed. It tended to draw supporters from the higher end of the socioeconomic scale in the 1840s and '50s: the wealthy planters in the South, merchants in New York City and Philadelphia, and the prosperous Yankee middle class. Yet that was not enough for electoral victory, which is why the Whigs nominated generals—William Henry Harrison, Zachary Taylor, and Winfield Scott—who could appeal to what pundits today call “the heartland.”

When the Republican party emerged from the pieces of the Whig coalition, it confronted the same dilemma, and Abraham Lincoln—the Midwesterner with a hardscrabble background and a moderate position on slavery—was chosen in part because his appeal was broader than that of Salmon Chase, a Dartmouth graduate and prominent Cincinnati attorney, or William Seward, also a lawyer, and the son of a wealthy landowner in upstate New York.

After the Civil War, the latent

conflict between those who cut the checks to fund the party and those who voted for it, cycle after cycle, persisted. This helps explain why the Republicans tended to nominate presidential candidates from the Midwest and vice-presidential candidates from New York: A balanced ticket helped to keep the peace.

The cultural, social, and economic divisions within the party have been reinforced in the last 80 years by ideological ones. Though founded out of opposition to the spread of slavery, the Republican party was Whiggish in its economic doctrine, making it the era's “big government” party. The 19th-century GOP sought to use governmental action to promote business development. Thus, Republicans supported high protective tariffs, favored laws allowing for national bank charters, took a broad view of federal powers to suppress state regulation of businesses, and encouraged the secretary of the Treasury to manipulate the currency to retain the gold standard.

Modern American conservatism developed in opposition to the New Deal, to fight the undeniable sense that laws like the National Industrial Recovery Act were changing the character of the country itself. In its first incarnation, this sentiment was present in both parties; indeed, some of the most prominent early opponents of the New Deal were leading Democrats—John Jakob Raskob, DNC chair in the 1920s, John Davis, 1924 presidential nominee, and Al Smith, 1928 nominee and 1932 runner-up.

Opposition to the New Deal and later the Great Society eventually migrated to the Republican party, in large part because its base voters from the small towns of the Midwest opposed such government growth. Moreover, manufacturing interests and small businessmen who had been key GOP donors before the New Deal stuck with the party because big government liberalism was bad for the bottom line. In time, they would be joined by Westerners and Southerners who had voted Democratic during the Progressive Era but chafed at the New Deal and Great Society's drive

Jay Cost is a staff writer at
THE WEEKLY STANDARD.

to centralize power in Washington.

Facing the liberalism of today's Democratic party, all factions of the GOP can usually agree on quite a lot. Virtually nobody in the coalition supports the Democrats' efforts to increase taxes or federal regulations, especially when the beneficiaries are labor unions or the environmentalist left. Yet that unity can mask a historical irony: The rise of the modern left has pushed many of the country's old political disagreements into the GOP. The skeptics of big government might once have been Democrats in the mold of Thomas Jefferson and Andrew Jackson, but now they are joined with the heirs of Alexander Hamilton and Henry Clay, who prefer to use the power of government to promote the private economy.

Considering how hot the conflict burned between these two forces when they were in different parties—the elections of 1800 and 1832 were particularly vitriolic—it is little wonder that today's

Republican establishment and its voting base can seem to hate each other more than they do the Democrats. Yet both sides must confront a stark reality: The American left is so strong today that neither half of the Republican party can do without the other. The GOP has poached most of the conservative voters of the Democratic party. Those who remain committed to the liberal program are so numerous that the Democrats' share of the vote is unlikely to fall below 45 percent, barring realignment. A united GOP, similarly, can count on about 45 percent support, meaning that politics today hinges on winning the support of that disengaged and unaffiliated middle 10 percent of the country.

Again, this is reminiscent of post-Civil War politics. Back then, the Republican party stood a chance only if it mounted its fullest effort, uniting the grassroots with the establishment. Every Republican voter in Indiana, Ohio, and upstate New York

was needed, when the margin of victory could come down to less than 1,000 votes. Equally, every Republican donor had to give all he could to help the GOP buy off the purchasable votes in the Midwest and New York City. As Pennsylvania boss Matt Quay once put it, all the fat had to be fried out of the pan. Whatever grievances the two sides might have against each other had to be resolved at the convention, for the fall campaign required a united front, lest the "Democracy" get its hands on the government.

Today, little has changed: The key state in the electoral contest is still Ohio. The base in the suburbs, small towns, and countryside needs to turn out to match Democratic turnout in the big cities, and the donors need to pony up the scratch to persuade the undecided via the airwaves that they need to vote. Anything less than a full effort by everybody means defeat.

Unfortunately, something less than a full effort occurred in the last two presidential cycles. No one in

Are We Breaking America's Promise?

By Thomas J. Donohue

President and CEO
U.S. Chamber of Commerce

What's more American than working to provide your children with a better life than you lived? The generational promise that the old would make sacrifices so the young can have greater opportunities is being threatened by the crushing burdens of America's ballooning entitlement programs. These programs will not only saddle our children with massive amounts of debt in the future, but are today crowding out critical investments that will be key to our long-term growth and prosperity.

The costs of our entitlement programs—Medicare, Medicaid, and Social Security—are soaring and unsustainable. In less than 10 years, entitlement programs will cost our economy \$3 trillion annually. Not a single major entitlement program is projected to be financially solvent in 20 years. To keep Social Security and Medicare going for

another 75 years would take \$40 trillion—money that, by the way, we don't have.

Why is this happening? Demographics are a driving factor. America is graying. Soon one-third of Americans will be retired, and they will spend one-third of their lives in retirement. And while the number of Americans over 65 will jump by 75% over the next decade, those of working age will nudge up by just 7%—meaning that fewer are paying into the system. Rising health care costs and poorly designed programs are also big parts of the problem.

Consigning our children and grandchildren to a future of debt is bad enough. Shortchanging investments they will need for our economy to grow and prosper is unacceptable. Today, entitlement programs and interest payments on our debt gobble up 85% of all the revenue the federal government collects in federal income and social security taxes. This leaves little left over for critical priorities like reforming our failing public education system, modernizing and maintaining our

crumbling infrastructure, and conducting basic research that helps drive innovation.

This is not a future befitting a great nation. Americans have been promised a better, brighter future—and we can still give it to them. By making relatively modest reforms to our entitlement programs now, we can preserve a safety net for the poor, sick, and elderly. And we can slow the explosive rate of entitlement spending growth before it drives the nation into insolvency, squeezes out funding for every other important national priority, or forces economy-crushing tax hikes.

We can take steps now to prevent the most predictable crisis in history—or we can wait until reality catches up with us and slaps us with a full-blown catastrophe. It's up to our leaders to face the facts, step up to the challenge, and act now to preserve America's promise for every generation.



U.S. CHAMBER OF COMMERCE
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the party seemed particularly enthusiastic about John McCain's candidacy. Turnout was down, and Barack Obama far outspent him. In 2012, the donor class seemed to come back for Mitt Romney, but vital sectors of the core Republican vote sat on their hands. A repeat of either scenario in 2016 will greatly aid the Democrats in the historically difficult quest to win the White House for the third time in a row.

Republicans on both sides of the intraparty divide, then, would do well to remember that they agree on quite a lot. It is one thing to have an intraparty fight about the role of government, but it is all academic if the Democrats have the power to enact Obamacare and pass untold fortunes off to green-energy cronies like Solyndra.

In the 19th century, the national convention was the place where the divide could be bridged. The requirement for a majority vote, and the absence of a "unit rule" privileging party machines in big states, meant that the party as a whole had to reach a consensus choice. This helps explain why so many presidents from this era came from Ohio. Today's Republican nomination process lacks this institutional rationality. It is, instead, a mad scramble for delegates, and would-be nominees have an incentive to divide Republicans.

Lacking institutional mechanisms to force consensus, Republicans themselves will have to choose it, given the reality that the establishment and the grassroots cannot thrive without each other. As they mull the alternatives, all participants in the nomination process must ask themselves three questions: (1) Can this candidate win the support of the unaffiliated voters who decide general elections? (2) Is the establishment of the party comfortable enough with this nominee to put forth all the money it can? And (3) are the grassroots excited enough about this nominee to show up in November?

The candidates for whom all three answers are "yes" are the "fusion" candidates who belong at the top of

any Republican's list. Most of the successful Republican nominees from Lincoln to the second Bush were such candidates, able to bridge the socioeconomic and ideological divides within their party. Such candidates unite the party by emphasizing the issues that excite both sides, ignoring those that are divisive, projecting a disposition that makes everybody feel welcome, and highlighting a personal background with which all factions can identify.

For some, this will feel like a let-down. It is more emotionally satisfying to channel Theodore Roosevelt

prior to the GOP convention in 1912 declaiming, "We stand at Armageddon, and we battle for the Lord!" But TR's breakaway Bull Moose party was short-lived, the Democrat, Woodrow Wilson, won in 1912, and TR was back in the Republican fold by 1916. That is how it usually goes: Disagreements within a coalition are rarely resolved, only papered over, usually by the personal charm and political skill of the nominee.

The smart play, then, is always the same: Find the guy who can make both sides reasonably happy and *nominate him*. ♦

As Goes North Carolina

So go Republican hopes to take over the Senate.

BY FRED BARNES

Raleigh, N.C.

To win the Senate, Republicans must win North Carolina. While it's mathematically possible to take the Senate without ousting Democratic senator Kay Hagan, the chances of that happening are close to zero. For Republicans, North Carolina is necessary. It's the key to control of the Senate.

It's number six on my list. That is, there are five states where capturing Democratic seats appears more likely—West Virginia, South Dakota, Montana, Louisiana, Arkansas. Then comes North Carolina. Assuming Republicans don't lose any of their own seats, those six pickups would give Republicans a 51-49 majority. And with it, the political equation in Washington would change. Republicans would be on offense, President Obama and Harry Reid on defense.

But winning in North Carolina is no cinch for Republicans. Two facts stand out. One, Hagan is extremely vulnerable. She's a Reid follower who voted for Obamacare and most of the president's agenda. Two, there's a budding consensus that State House speaker Thom Tillis is the Republican with the best chance of defeating Hagan. Democrats, including Reid, certainly think he is.

In this circumstance, touting Hagan is too tame a tactic for Democrats. So she and Reid are playing hardball, intervening in the GOP Senate primary against Tillis. In Hagan's first ad last week, she attacked Tillis for commenting favorably on Obamacare but criticizing Hagan for voting for it. "Watch close," the radio spot said. "Seems Thom Tillis wants it both ways." In truth, he doesn't. Tillis advocates repeal of Obamacare. A day before Hagan struck, Reid's Senate Majority PAC began airing \$1 million in TV ads that link Tillis to two staffers

Fred Barnes is an executive editor at THE WEEKLY STANDARD.

who were fired for having affairs with lobbyists. Tillis shared an apartment with one of them and both got severance pay when they were fired.

The Tillis campaign accused Hagan and Reid of “meddling” in the May 6 primary. Indeed, they are. They aim for one of three outcomes: cause Tillis to lose in the primary, be forced into a runoff on July 15, or at least be significantly tarnished if he faces Hagan in the general election. Neither ad, by the way, mentioned Tillis’s two opponents in the Republican primary, Baptist preacher Mark Harris and physician Greg Brannon.

Tillis is only one of Hagan’s worries. She was lucky to be elected in the first place in 2008. Obama attracted a huge African-American turnout, which allowed him to win the state and Hagan to unseat Republican Elizabeth Dole. An added boost came from Dole’s clumsy campaign tactics.

Hagan hasn’t developed a strong identity in Washington, nor was she a high-visibility figure in North Carolina either—until the past six months. What changed was the exposure as a lie of Obama’s promise that folks could keep their health insurance. Like other Democratic senators, Hagan had routinely said the same thing and was caught on tape saying so.

When Americans for Prosperity began running TV ads with video of her repeating Obama’s false claim, she panicked. When questioned about her statement, she ran away from reporters at one point. She wrongly blamed insurers, not Obamacare, for the cancellation of health care policies. And as her poll numbers tanked, she rose on the Republican target list. Her job approval rating is now in the high 30s to low 40s, the same as Obama’s in the state. This is dangerously low. History is no help. No Democratic senator has been reelected in North Carolina since Sam Ervin in 1968.

Hagan, 60, has a problem with the one-third of the electorate that is “unaffiliated.” Polls show she’s attracting roughly 40 percent of this bloc. She needs a minimum of 50 percent to win. It won’t come easily. She’ll have to do what Obama did to Mitt

Romney: make the GOP candidate more unappealing than she is.

Tillis, 53, hasn’t polled well, but he insists he has a legitimate shot at getting the minimum of 40 percent to win the primary and avoid a runoff. He ran first in a Public Policy Polling survey in early April but with only 18 percent of the primary vote. A week earlier, a SurveyUSA poll put him at 23 percent.

But his candidacy is bolstered by a theory. It holds that he, alone among the Republicans, can win a statewide majority. As a mainstream conservative, he can tap into the “unaffiliated” vote more effectively than Harris or Brannon can. Harris, who led the successful drive to put traditional marriage into the state constitution, is faulted for



Hagan and her albatross

dwelling excessively on social issues, and Brannon is a libertarian and Tea Party favorite whose ideas are controversial. That’s the theory anyway.

Tillis has the backing of what’s known by its critics as the Republican establishment. The U.S. Chamber of Commerce, the National Rifle Association, National Right to Life, and the super-PAC American Crossroads are backing him. The Chamber and Crossroads are running TV ads. An implicit threat comes with funding by the establishment, that it will dry up if Tillis isn’t the nominee.

Tillis’s strength is the impressive record as speaker he’s running on. In 2012, North Carolina was the best GOP state in the country. Republicans won the governorship and large majorities in the legislature and proceeded to enact a sweeping conservative agenda that included tax and spending cuts, reduced unemployment benefits, and a voter ID law. The tax cuts have been

credited with spurring the fastest drop in unemployment in the country—from 10.4 percent in January 2011 to 6.4 percent in March. And the benefit cuts no doubt prompted some of the jobless to prefer work.

But Tillis has personal vulnerabilities that Hagan and Reid have already begun to focus on. The romance scandal is one. Another is his controversial appointment of donors to the University of North Carolina board. Still another is his listing of a degree from the University of Maryland. It was from the university’s distance-learning arm.

Though it’s his first campaign for any elected office, Harris, 48, is a formidable figure. The former president of the state Baptist Federation and pastor of a large Baptist church in Charlotte, he’s a strong speaker and probably the most dynamic of the candidates. “I’m not given to nuance,” he told me. “What’s inside comes out.” Last week, he spent \$300,000 to air a cable ad. It may be the most effective ad of the campaign. Harris is the greatest threat to Tillis. Win or lose, he’s become an important figure in North Carolina politics.

Brannon, 53, has issues, not all of them libertarian ones. He’s been endorsed by GOP senators Mike Lee of Utah and Rand Paul of Kentucky. But a judge recently issued a \$250,000 judgment against him for allegedly misleading investors. He’s also been accused of plagiarizing statements used in his campaign.

To win, Democratic consultant Brad Crone says, Republicans will have to get over their differences. “At the end of the day, the social conservatives and the Tea Party folks are going to have to realize they’ve got to pivot back to a candidate who can win on a statewide basis.” That’s Tillis.

Then independents—the “unaffiliated”—will pick the next senator. They dislike all politicians, says political sage Carter Wrenn, “but they dislike Obama the most.” Since he’s increasingly unpopular in North Carolina, “that makes it look like it might break for Republicans.” Thus creating a Republican Senate. ♦

Mitch McConnell, Judicial Activist

The Senate minority leader seeks majority opinions. **BY TERRY EASTLAND**

This is the best Supreme Court, if you're interested in a free society and in the ability of Americans to participate in the political process with a minimum amount of government restrictions. In fact, this is a great Supreme Court."

Of course, President Obama, this great Supreme Court's greatest scold, didn't say that. Senate minority leader Mitch McConnell did, in an interview last week in the wake of the Court's decision in *McCutcheon v. Federal Election Commission* (FEC).

In *McCutcheon*, the Court, vindicating the First Amendment's guarantee against laws abridging "the freedom of speech," struck down so-called aggregate limits on how much an individual may contribute to candidates for federal office, political parties, and political action committees (PACs). While donors are already subject to limits on how much they can give to any single candidate, party, or PAC, aggregate limits cap the amount that they can contribute altogether, in any two-year election cycle.

First elected to the Senate from Kentucky in 1984 and its minority leader since 2007, McConnell filed in the case an amicus curiae ("friend of the court") brief supporting Sean McCutcheon, an Alabama businessman. It is the eleventh case involving elections and the First Amendment in which McConnell has been involved—in all but one as a friend of the court. In each of the last six of those cases the Court has decided, McConnell has been on the winning side.

In *Randall v. Sorrell* (2006), the

Court struck down limits Vermont law imposed on campaign contributions and campaign spending. A year later, in *Wisconsin Right to Life v. FEC*, the Court voided restrictions on "issue ads" mentioning a candidate for office within 30 days of a primary or 60 days of a general election.

In *Citizens United v. FEC* (2010)—the decision that President Obama used in his 2010 State of the Union speech to excoriate the justices, with some sitting in the audience—the Court ruled that the government may not limit the political speech of corporations, associations, and trade unions in the runup to a primary or a general election. In *McComish v. Bennett* (2011), the Court rejected Arizona's system of providing additional funding to publicly funded candidates when they face big-spending opponents or opposition groups. And in *American Tradition Partnership, Inc. v. Bullock* (2012), the Court, invoking *Citizens United*, struck down a Montana law banning all corporate spending in state elections.

In these cases, McConnell challenged what he calls "the government impulse to control the speech of American citizens and how they run for office." It is an impulse found in the elective branches of the federal government, and thus his own chamber, the Senate, as well as in the states, as the cases involving Vermont and Montana demonstrate. McConnell is pleased with the First Amendment "corrections" to this impulse the Court has made, calling them "outstanding decisions that move us in the right direction."

Of course, for McConnell, things were not always moving in the right direction with respect to "political

speech," as it is often called. Indeed, in 2003 the Court reviewed the new measure known as McCain-Feingold (after its chief sponsors John McCain and Russell Feingold) and signed into law by President George W. Bush; key provisions imposed substantial limits on campaign contributions and spending. The Court sustained most of the law in *McConnell v. FEC*, the McConnell who brought the challenge being, of course, Mitch McConnell—he was the lead plaintiff in the only case in which he has been a party.

McConnell says that the case that bears his name was "the low point for me on this issue," but soon enough things turned, with the Court coming around to a "view of the First Amendment and political speech similar to my own." Why? In large part, he says, because, in 2006, Justice Sandra Day O'Connor retired and Justice Samuel Alito took her place.

McConnell's interest in the First Amendment and how it applies to political speech dates to the 1970s, when, just a few years out of law school, he taught a class on political parties and elections in Louisville. "I developed an academic interest and then later, when I became a politician myself, I had a practical interest in it—and a growing belief that this is a matter on which [government] ought to minimally intrude rather than micromanage everything." McConnell's litigating strategy (to call it that) is this: "when [I] see a case where . . . there's an opportunity to push back against overreaching government efforts to micromanage political speech, I look for a way to get involved."

Right now there is no such case on the horizon, perhaps because the law has been corrected reasonably well in the recent cases. But that doesn't mean McConnell is no longer litigating the public interest. In recent years, in fact, he's been an amicus in cases on other issues. But where in the campaign finance cases McConnell usually has filed by himself, in these other cases McConnell has been one in a group of amici including senators but sometimes members of the House as well, all the officeholders on these briefs

Terry Eastland is an executive editor at THE WEEKLY STANDARD.

being Republicans. The cases tend to be well known: Some have resulted in landmark decisions; some, now before the Court, may achieve that status.

In 2012 McConnell joined 35 senators on an amicus brief in *NFIB v. Sebelius*. The brief addressed whether the entire Affordable Care Act should be struck down if the individual mandate were found unconstitutional, and it answered that question in the affirmative, reasoning that the mandate was at the heart of the law, and the law could not achieve its purposes without the provision. The brief assumed the unconstitutionality of the mandate, those on the brief being of the view (a McConnell aide told me) that the mandate exceeded the authority of Congress under the commerce clause. As it happened, a five-justice majority agreed the mandate did violate the commerce clause, but a different majority sustained the mandate as an exercise of the tax power, rendering “severability” a nonissue.

In 2012, McConnell joined nine

of his Republican colleagues on an amicus brief initiated by Senator Orrin Hatch in *U.S. v. Windsor*; at issue was the Defense of Marriage Act. The Obama administration had refused, on very weak grounds, to defend the law in court. The 10 Republican senators entered the case hoping to help vindicate DOMA’s constitutionality, notwithstanding an executive branch derelict in its duties and determined to see the law struck down—as, in the event, it was.

In 2013, McConnell joined Rand Paul, the junior senator from Kentucky, and six House Republicans in an amicus brief in *Utility Air Regulatory Group v. EPA*. At issue is whether agency regulations limiting certain air pollutants are unconstitutional—which the eight officeholders say they are, contending that the EPA “has usurped Congress’s exclusive authority [to legislate] by improperly exercising legislative power and unilaterally amending a statute.”

Utility Air will be decided before

the term ends in June, as will the three other cases in which McConnell has filed amicus briefs: *Town of Greece v. Galloway*, with 32 senators; *Sebelius v. Hobby Lobby*, with 15 senators and House members; and *NLRB v. Noel Canning*, with 44 senators—all Republicans, meaning that every Republican senator joined the brief.

In *Galloway*, the constitutionality of legislative prayer is the issue, and the amicus brief supports the prayers from Greece, N.Y., contested in the case, citing the Senate’s interest in protecting its own chaplaincy, now more than 200 years old. In *Hobby Lobby*, the “contraceptive mandate” in Health and Human Services regulations pursuant to the Affordable Care Act is being challenged on religious liberty grounds, with the amicus brief taking the side of religious liberty. And in *Noel Canning*, the issue is who gets to decide if the Senate is in recess for purposes of the president’s ability to make a recess appointment under the Constitution’s recess appointment clause—the



SPECIAL GUEST:
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Senate or the president? The Senate, say McConnell and company.

Is it unusual for a senator to file as an amicus in a Supreme Court case? I put the question to McConnell, who didn't know but was interested in the answer. Don Ritchie, the Senate historian, said that modern senators do file amicus briefs and even occasionally will bring a case (if standing is available), as McConnell did against the FEC. And, Ritchie confirmed, senators get into the cases they do thinking they should use whatever lawful instruments are available in trying to achieve their strategic goals, especially in a capital where advances are often made very slowly.

Members of both parties have taken the amicus route—Democratic senator Sheldon Whitehouse, for example, joined John McCain in an amicus filing (at odds with McConnell's position) in *American Tradition Partnership*. Still, Democratic members of Congress are not as active in filing amicus briefs as Republican members are, perhaps because Republicans see more opportunities to advance their legal views in the cases the Court accepts—views on the structural Constitution and on the First Amendment and the liberties they were written to protect. Certainly McConnell, who now has participated in at least 20 cases during his last 20 years in the Senate, making him probably the Senate's most frequent filer of amicus briefs, has an eye out for the strategic case.

As for whether the justices read the members' amicus briefs, McConnell has wondered about that himself, and has heard conflicting answers. But he is encouraged that the justices have given his lawyer argument time in *Citizens United*, *McCutcheon*, and *Noel Canning*, an indication, he says, that they're paying attention.

McConnell is looking forward to the balance of the term, and would delight in a victory in each of the four cases he and his colleagues have entered, but especially in *Noel Canning*, the recess appointment clause case. As he explains, "It would be a pretty big brushback pitch against a president who has rather expansive views of what he can do across the board." ♦

Endangered Species

The demise of the pro-life Democrat.

BY MARIA SANTOS

Kristen Day has just sent an email thanking a Democratic state representative in Michigan for supporting a bill banning abortion funding in Obamacare. He's grateful for her note—she's only the second person to thank him. "It's a really lonely road, to be a pro-life Democrat," she remarks.

It's lonelier than ever in 2014. Day is the president of Democrats for Life of America (DFLA). Her organization once had around 50 elected officials on Capitol Hill, but now has only 7. She used to work closely with pro-life powerhouses like the National Right to Life Committee and the Susan B. Anthony List, but "I was kind of kicked out of the pro-life movement," she says with a wry laugh. In fact, she's involved in the story behind an SBA List lawsuit that heads to the Supreme Court this week.

How thankless is Day's job? Her party's platform "strongly and unequivocally supports *Roe v. Wade*," and party leaders are not interested in dissenting views. "There are some Democrats who would rather be in the minority than have pro-life Democrats in the party," she admits. "They have come right out and said it."

It wasn't always this way. In 1977, Democrats had a 292-seat majority in the House, and 43 percent of them consistently voted pro-life. Day's

book, *Democrats for Life: Pro-Life Politics and the Silenced Majority*, details how the party eventually became dominated by pro-abortion advocates. She says it comes down to the massive funding of pro-abortion groups like Planned Parenthood and NARAL. In the primary for Maine's 2nd Congressional District, for example, DFLA is

backing a pro-life candidate, Troy Jackson. But running against him is Emily Cain, a candidate on EMILY's List, a powerful pro-abortion election machine. "They're throwing tons of money into the campaign," says Day, adding that Cain "probably won't win that district if she wins the primary. But Troy Jackson would probably win." The district's incumbent, Mike

Michaud, originally won the seat as a pro-life Democrat, although his views have since "evolved." What Democrats don't realize, she says, is that they need pro-lifers to win back the House.

Day grew up in a Republican home, where opposing abortion was a given. In 1988, while at Michigan State University, and somewhat to her father's dismay, she got involved with the College Democrats. After graduation, she headed to Capitol Hill to work for Bill Ford, a Michigan congressman at the time. "When you get involved in Democratic politics, that's what they tell you—you support a woman's right to choose." But Day could never quite forget her pro-life roots.

In 1995 she began working for Rep. Jim Barcia, again from Michigan, an



Kristen Day

Maria Santos is an editorial assistant at THE WEEKLY STANDARD.

TWITTER / DEMOCRATS FOR LIFE

anti-abortion Democrat. His other staffers avoided the issue, so Day happily volunteered to take it on. She felt she had finally found her place in the party. As Day tells it, there are more pro-life Democrats on Capitol Hill than most people suspect. They're simply too scared to vote their consciences. And, a crucial point for Day and DFLA: There are districts in states like West Virginia and Louisiana where Democrats cannot win without a pro-life candidate.

Barcia became the co-chair of the pro-life caucus, along with Republican Chris Smith of New Jersey. Eventually his chief of staff, Day set up a whip operation to advocate for anti-abortion legislation with sympathetic Democrats.

By 2002, pregnant with her first child and looking for a respite from her 80-hour work week, Day became executive director for DFLA. For 10 years, she worked alongside other pro-life groups and regularly attended all the big pro-life meetings—often as a nursing mom, with her small children in tow.

Obamacare would change all of that. Pro-life Democrat Bart Stupak proposed an amendment in the House to forbid taxpayer funding of abortion. Pro-life groups pushed hard, urging their Democratic allies to refuse to vote for Obamacare without the Stupak amendment. At one point, around 60 Democrats supported the amendment. But two weeks before the vote, they changed their minds. Instead of the amendment, 20 Democratic congressmen accepted an executive order from the president promising there would be no taxpayer funding of abortion. With Day's support, the representatives voted for Obamacare without the Stupak amendment.

To other pro-lifers, this was a betrayal of their agreement: An executive order does not have the legal force to actually prohibit taxpayer-funded abortions.

In the 2010 midterms, the pro-life groups struck back. They targeted the Democrats who had turned on them. Stupak and a few others retired, but most of the 20 who had changed their

minds on the amendment were voted out of office.

In Cincinnati, the SBA List bought a billboard attacking Rep. Steve Driehaus, one of those 20. It read, "Shame on Steve Driehaus! Driehaus voted FOR taxpayer-funded abortion." Driehaus filed a complaint with the Ohio Election Commission, arguing the billboard violated a state law against making false claims about a candidate. Kristen Day and DFLA filed an affidavit in his support, stating Obamacare does not fund abortions. The ACLU intervened on the SBA List's behalf, and a four-year legal battle was born.

Driehaus lost the election, and sued the SBA List for defamation and loss of livelihood. A judge ruled against him. Meanwhile the SBA List filed a suit against Ohio's "False Statement Law," arguing it violates the First Amendment. Their case was dismissed. The SBA List appealed, and now awaits a hearing from the Supreme Court this week.

Day paints this all as evidence that the pro-life movement is too partisan, and only concerned with electing Republicans. The SBA List will spend around \$10 million this year on elections alone. Most of this will go to Republican candidates, although not all—Democrat Dan Lipinski of Illinois was one of their top recipients in 2013. Still, Day complains that they "hide" behind bipartisan labels, whereas her organization is upfront about what they are: a Democratic organization. "The pro-life Democrats who cast these votes are not making any friends within the party," she says. "To have the pro-life community not support them either, I mean, these men and women who are casting these votes, they're committed to this cause . . . they're not doing it for any financial gain, any political gain."

The pro-life movement has no regrets on pushing the Democrats who deserted Stupak out of office. "They had to be defeated," says Marjorie Dannenfelser, president of the SBA List. "They were the linchpin, the final votes, the last holdouts. I was

their advocate, I worked for them, I grieve this loss." For the SBA List and other pro-life groups, Obamacare opened the door to taxpayer funding of abortions, and a betrayal on this issue was too serious to overlook.

Dannenfelser rejects Day's claims that pro-life groups are partisan. She says there *should* be a strong, specifically Democratic pro-life organization. But she doesn't think DFLA is it. "There's nowhere else to go other than Kristen and the Democrats for Life, and that's sad. It's not a dynamic, disciplined, visionary organization."

About 2010, Day says, "It was a bad time." After the vote on Obamacare, a quarterly meeting for the pro-life organizations came up, a meeting she had attended every year with her children. The SBA List withdrew her invitation from the meeting. "Having people not talking to me any more, it was very difficult. But as an organization it did make us look at, well, who are our friends? Obviously it wasn't them, if we have a disagreement on one issue and they're so quick to say 'we don't want to have anything to do with you anymore.'"

Day shifted focus back to work within her own party. She says she's happier now. "People never trusted me. . . . I actually feel more welcome in the Democratic party than I do in the pro-life movement."

These days DFLA focuses on electing state representatives who oppose abortion, hoping that eventually they can change the party from the bottom up. Day has spent the past few years working with the Democratic National Committee and the Democratic Congressional Campaign Committee to identify pro-life state representatives—she now has over 100 state members. This election cycle DFLA is backing eight candidates. They've also filed a case against Obamacare's contraception mandate, and will keep lobbying to moderate the language on abortion in the party platform.

Day has high hopes of eventually changing the party platform, one state at a time. "Fortunately," she says, "I'm an optimist." ♦

Out with the Old

Italy tries someone new.

BY MICHAEL LEDEEN

Italy has long been Europe's political laboratory, having invented fascism, incubated eurocommunism, launched the postwar economic miracle, and brought the social democratic nanny state to ruin. Most Italians are very unhappy, as well they might be. Unemployment is at record highs (13 percent overall, the highest in the history of the measurement, while for 15-24-year-olds, it's 42 percent). The cost of living, as anyone who has visited recently will know, is outrageously high, and more and more parents are telling their children to learn German or English and emigrate. Few believe in a new miracle. They think their country is rotten to the core, profoundly corrupt in all key institutions, from politics to business, and banking to soccer. Even the old bit of folk wisdom "things were better when they were worse" (because people were more honest and worked harder) has proven wrong. Things are worse, and they haven't gotten at all better.

This explains the country's latest political experiment: Throw the old bums out, let a new generation give it a try. The broom is wielded by a 39-year-old Tuscan named Matteo Renzi who has been prime minister for a month and a half. I'm obliged to tell you that I've known him for about 10 years, and he has always seemed to me the creation of central casting: handsome, well spoken, a lovely and talented wife who teaches school, three terrific kids. He's a lot more fun than the usual geriatric crowd that Italians are accustomed to, including 88-year-old president Giorgio Napolitano and the man who governed the country for most of the past 20 years, Silvio Berlusconi, now pushing 78. Renzi's presence in the official

residence (Rome's Palazzo Chigi) has produced at least some hope of positive change. He's energetic, an avid tweeter, gives lively press conferences, and is calling for real reform of the country's sclerotic institutions and practices.

Renzi's spectacular career is an extended revolt against various political establishments and flies in the face of conventional political wisdom. In a very few years he's gone from political unknown (mayor of the Florence Province) to mayor of the city of Florence, to head of the center-left Democratic party (PD), to prime minister. The last three advances were widely written off in advance by the pundits as quixotic adventures. But there he is, having swept aside the Florentine leftist establishment, the elders of the PD in a national primary he won by a landslide, and then a sitting government. Many now ask whether he has the skills and the stomach to govern a major country in crisis.

As in the past, his current agenda is very ambitious. He sums it up as "cut up Italy." Cut taxes, cut the bureaucracy, cut government programs and agencies, and effectively reduce parliament to a single house (he wants an unelected senate with no budget, no role in selecting the prime minister, no vote on budgetary matters). He's created a panel to choose the first batch of "useless organisms" to eliminate, and he says that's only "the antipasto," with many more to come. He's starting well. Last week parliament approved his budget, including tax cuts.

Among the likely projects: eliminate the requirement that all companies sign up with their local Chamber of Commerce, and find a way to encourage banks to lend more money to families and businesses. The IMF says that credit restrictions over the last 18 months have cost the country roughly

2.5 percent of GDP. But the biggest challenge will be the reform of labor laws, which means resolving the long-standing impasse between the trade unions, who want job security for their members, and the business community, which insists on greater flexibility in hiring and firing. Right now, there are long-term (think lifetime) contracts, and short-term agreements for brief periods, after which the former employees get thrown back on the unemployment rolls. Some of those who counsel Renzi think it would be best to have a much freer labor market, providing greater hope to those now working beneath a ticking clock as their short contract expires, and greater freedom to employers to expand and contract their employment numbers in response to market conditions.

While Renzi is the head of a center-left party that is the most recent version of what used to be the Communist party, he is certainly no doctrinaire leftist, and in many ways is no leftist at all, as demonstrated by his unlikely political alliance with Berlusconi's center-right Forza Italia. Berlusconi himself remains a major force, and has just dodged imprisonment for fraud, which is a lucky break for Renzi since Berlusconi provides the prime minister with a majority.

Those trying to evaluate Renzi's chances for success invariably stress his youth, but in so doing they often underplay his interest in the world outside Italy. He has spent considerable time visiting America, including universities from MIT to Stanford, Berkeley, and Texas, and is said to consult with American and British economists about his future strategies.

Obama recently visited Rome, and pronounced himself well pleased with the new prime minister. Odd to say, Renzi is probably more of an Atlanticist than Obama. Still, he's got plenty of things to do before tackling the daunting labor issues in the fall. If he succeeds in streamlining Italy in the next two to three months, his chances for success in the fall will improve, and his prospects will be further strengthened by his role as six-month head of the European Commission. ♦

Michael Ledeen is Freedom Scholar at the Foundation for Defense of Democracies.



Through a Google Glass, Darkly

Surveillance of, by, and for the people

BY MATT LABASH

“Just because something bears the aspect of the inevitable one should not, therefore, go along willingly with it.”

—Philip K. Dick

The first time I saw someone wearing Google Glass in the wild, I was standing at a friend’s party at South by Southwest Interactive in Austin—the place where the tech world gathers each year to gleefully discover what next big “innovation” will eventually displace you. The party hotel was trendily down-market, a retro motor-court, but one where the house marinates its own cocktail olives while serving pepper-glazed bacon at Saturday jazz brunch.

As I stood there among media types and Nerd-World machers, draining my fourth Lone Star beer, trying to drown out the sound of all the buzzwords—*disruption!* . . . *big data!* . . . *The Cloud!*—that’s when I saw him, with the future sitting on his face, or at least what will become the future if Google has its way. And with \$59.8 billion in annual revenue and 70 percent of the world’s advertising-optimized Internet search market in its back pocket (figures I just Googled), Google often has its way.

There he was in his Google Glass, which, if you’re a shut-in who’s escaped the last two years of unrelenting hype, is Google’s foray into wearable face computers. Not

yet released to the public (it’s currently in its beta phase, and is in the hands of developers, “Glass Explorers,” and tech-world beautiful people, such as they are), Glass essentially puts a smartphone, including camera, videorecorder, and Internet, on your eye. The Glasshole, as the Glass-wearing elect are now commonly called, stood there in his lensless frames. Or not so much frames, as a titanium bar draped across his brow, to which is affixed a rectangular three-quarter-inch LED display over one eye, and a colorful plastic “touchpad” arm that rests over one ear and also holds the circuitry. Curiosity-seekers, ooohing-and-ahhhing, thronged like he was a carnival exhibit. A Glassholier-than-thou shadow crept over his countenance, his facial muscles toggling between smugness and self-consciousness. As with most Glassholes, it wasn’t entirely clear if he was wearing Glass, or Glass was wearing him.

Even as both female and male partygoers crowded in to touch the Next Big Thing, he looked like a dorky android. That’s android as in “robot with a human appearance,” not to be confused with the Android operating system, which powers 79 percent of the world’s smartphones (as well as Glass itself), and which Google owns. The same way it owns YouTube and all manner of reality-bending interests. The same way it owns Boston Dynamics, which makes military robotics that some think could replace soldiers. The same way it owns artificial intelligence outfits like DeepMind Technologies, which some think could help outsource our thinking to computers, more than we already do.

ALL IMAGES: THE WEEKLY STANDARD

Matt Labash is a senior writer at THE WEEKLY STANDARD.

The same way that Google owns you. Or at least your data, which they scoop up as you beaver away for free on their services, Googling and Gmailing and texting and YouTubeing and mapping and street-viewing and book-searching. Your interests, your communications, your location, your aspirations, your porn predilections—it's all right there in the data. You might think of yourself as more than the sum of your data. But the 1s and 0s don't lie. Your data might reveal a truer version of you than the version of you that you prefer. And all of these you-generated data feed Google's insatiable algorithmic maw, which helps them tailor and target ads to you. This makes Google—already your trusted uncle or your know-it-all Big Brother—ever-smarter. And they claim it makes you smarter as well, as more and more of your data float Google's world-domination operation. "We want Google to be the third half of your brain," Google cofounder Sergey Brin has said, like a character from a Philip K. Dick dystopia, by way of Yogi Berra.

GETTING RIGHT UP TO THE CREEPY LINE

Project Glass" was announced in April 2012, an outgrowth of the semi-secretive Google X division, populated by a group of moon-shot engineers who strive to make science fiction science nonfiction with endeavors like Project Loon (which seeks to bring Internet access to the world via balloons floating in the stratosphere) and driverless cars. "Your car should drive itself," Google executive chairman Eric Schmidt has said, demonstrating Google's typical light touch. "It's amazing to me that we let humans drive cars. . . . It's a bug that cars were invented before computers."

Since the Glass announcement, I'd tried repeatedly to get a test ride with The Future on my face in order to write about it, but received no cooperation from Google's media gatekeepers. So when I spied my first Glasshole there in Austin in March 2013, my reaction was twofold: (1) I really need to punch that guy in the throat. (2) I wonder if he would let me try them on?

I didn't, even though he wouldn't. He claimed he was forbidden by his terms of service to let others try the Glass. (Not true, it turns out.) What I did do, however, was bypass the media stiff-armers by applying online to become a Glass Explorer.

To my surprise, an Explorer invitation arrived in my inbox in February. Unlike many of the early adopters and developers who were admitted, I don't exactly live on the bleeding-edge of tomorrow. Over the years, I've cultivated a reputation as a cyber-skeptic, as technology too often nowadays seems to be less about complementing our humanity

than obliterating it. While I'm not exactly a Luddite—I carry a phone, albeit a dumb one, and I spend a good half of each day in a screen's glow, like the rest of God-fearing America—I have with some regularity thumped tech-triumphalists with subtly titled articles like "Down with Facebook!" "The Twidiocracy," and "Why iHate Steve Jobs" (God rest his soul).

As my puzzled wife said upon hearing the news, "They're Google. Didn't they Google you?"

Apparently not. All I had to do to join the community of 10,000 or so invitation-only attention-jockeys and guinea pigs was pay Google \$1,500 (\$1,633.12 with tax) to help them test their new product, for which they will gain access to additional data while reaping all the financial rewards. (Welcome to Web 2.0 economics.)



Glass Guide Danielle, through the Google Glass

Sitting in a cavernous loft over the Chelsea Market in Manhattan, which serves as one of three Explorer "base camps," I have become that which I loathed: a Glasshole. I am here to pick up my Glass and to receive instruction on how to use it. In the lobby, I run into suspiciously chipper twentysomethings with full-bodied hair and strong jawlines, the kind of faces that greet you in high-end cults, like a Scientology center or an Apple Store.

I meet my Glass Guide, Danielle. She is young and blonde, and bears some resemblance to the actress Alicia Silverstone. I pull out a micro-recorder, asking if she minds if we document the experience. She doesn't. She is wearing Glass, too, as do all the Glass Guides. With camera lenses embedded in our titanium eyewear, we are all documentarians now, although she asks me not to photograph other Glass base-campers when I pull out a traditional camera. It'd be a shame to violate their privacy while they're learning how to violate everyone else's.

Danielle pulls my Glass out of a box that's as big as an old family Bible. I'd had a choice of five colors, some of them subdued like "shale" or "charcoal." But upon consulting my color wheel, I'd opted for tangerine, which screams

“look at me.” After all, what’s the point of wearing Glass if you don’t want to be noticed wearing Glass?

I slip them on, and it’s about as bad as I expected. Not a good look for me, or possibly anyone. I look like a short-bus version of LeVar Burton’s character Geordi La Forge from *Star Trek: The Next Generation*. Except La Forge was blind, and he wore a prosthetic device to restore his sight. Whereas I just look like a pretentious tool with a child’s toy strapped to my head. When I affix the slide-on shades, it might be even worse. They smack of goofy-dictator glasses, making me resemble a cut-rate Kim Jong-un.

Google recently inked a deal with Luxottica—makers of Oakley and Ray-Ban glasses—to design more aesthetically appealing Glasswear down the road. But for now, “I look like a freak,” I tell Danielle. “No, you don’t,” she says unconvinced. Plenty in the press have made fun of Glass’s dopiness. *Valleywag*’s Sam Biddle, Glass’s tormenter-in-chief, holds that Glass is “only slightly less stigmatized than a giant swastika or swath of acne.” But never underestimate what society will end up considering acceptable. How else to explain a country where it’s possible to buy men’s jeggings (jean leggings)?

Danielle adjusts the nose stems so that the Glass prism—the eye-screen—sits slightly above my right eye. The idea, says Danielle, is that Glass should be unobtrusive, putting aside the fact that you have a computer attached to your face. But in reality, at least in order for me to properly see it, the screen covers the top third of my right eye. To see Danielle without looking at it, I have to tilt my head up at a 20-degree angle. If you’re not continuously using it, the monitor shuts off. But even when the screen goes dark, it’s like looking through the bottom of a dirty Coke bottle, or having what ophthalmologists call a scotoma—a spot or hole in your visual field. You can reactivate your screen either by tapping the touchpad with your finger or by deliberately jerking your head back so that your screen clicks on. But doing so makes you look like you’ve just been rear-ended by an imaginary car.

Danielle shows me all the tricks. Tapping the touchpad over your right temple is the equivalent of “enter,” while swiping it scrolls the text in front of your eye. Two fingers held down, while moving your head, turns your cranium into a human cursor. She calibrates my eye, so that I am able to take a picture just by winking. I take several of her, whether she knows it or not. It might seem kind of creepy, but hell, it’s her product. And besides, I like to think I’m operating in the spirit of Google’s Eric Schmidt, who once said, “Google policy is to get right up to the creepy line and not cross it.”

We do have a problem. A McCann Worldgroup study found that over half of 16-22-year-olds would rather give up their sense of smell than live without their technology.

She also shows me the voice commands, suggesting we have Google translate something into Japanese. I say, “Okay, Glass, Google, How you do say, ‘Get me out of here,’ in Japanese?” Google returns a page from the *Lost in Translation* screenplay—the Sofia Coppola film that was set in Japan. We try again. This time, a voice comes through the transducer (a speaker that makes sound by vibrating the bones in your head), saying *watashi o koko kara tsuredashite kudasai*. I’m assuming it’s the correct Japanese translation. Though how would I know? That’s what I use Google for.

Danielle is patient. Our scheduled hourlong orientation takes two hours with all my questions. I’m a slow learner, but there’s a lot to remember. When I gather my belongings, and the big family-Bible box, I shake it, asking her where the instructions are. There aren’t any, she says. “Why don’t they have written instructions?” I ask. Even Slinkys come with operating instructions. “That’s a good question,”

she says. “Is print dead?” I press, now troubled. “That’s what I was told in my communications class,” she responds flatly.

Glass Guides promise that you’ll attract a lot of attention. But back on the street afterwards, I’m not quite the freak show I expect to be, as jaded New Yorkers walk by, uninterested. A guy in a hard hat does approach me, wanting to know

how he can get Glass. I tell him no release date has been announced yet, nor has an official price. It’s expected to retail considerably cheaper, but if it stays \$1,500, I tell him, he might want to mug an Explorer in the meantime. “Oh no,” he says, “Not a chance, man. With that GPS, they’d find me faster than they find you.”

When I ask my cab driver how he’d feel if I were tapping him right now, he practically yawns. “I’m totally fine with that.” The government spies on us all the time, he says. From speed cameras to IRS snoops to the DARPA drone camera that can catch you waving from 15,000 feet. My cabbie makes a fair point. In fact, after Edward Snowden’s leaks about the NSA’s surveillance and data-mining program, few seemed terribly shocked by the private-public partnership the arrangement suggested, whereby the NSA helped themselves to the servers of giant tech companies like Google and Facebook. It’s an operation Google and others explicitly denied knowing about, while the NSA’s general counsel recently testified that they consented to the spy agency collecting their users’ data all along.

In Penn Station, I hardly garner a sideways glance. On the Acela train back to D.C., everyone in my car is so absorbed in their own electronics—their iPads, their iPhones, all of their iSundries—I find it impossible to raise

iBrows, since I can hardly make contact with the iBalls under them. An attractive businesswoman, Kimberly Shells, is sitting across from me. With earbuds inserted, she is lost in her own iWorld. Or so I think. After watching her pick mixed nuts out of a cup for a while, I decide to break the ice by winking a picture of her, then asking her if she wants to see it. I expect her to tell me to get bent, or to call the authorities. Instead, she smiles warmly, if slightly warily. “Oh, I was wondering what that is. I thought maybe you had an eye handicap or injury.”

When I inform her of my exalted status as a Glass Explorer, the guy next to her asks if I’m selling them. In fact, I explain, I had to pay 1,500 bucks for the privilege of wearing these. “I would think they’d pay you,” says Shells. I ask her if she might wear them when they’re finally released. “Uhhh, no,” she says, not wishing to offend. “It’s just . . . I don’t want the Internet on my eye. I’m already as connected as I need to be.”

From the looks of the hunchbacked, thumb-clacking herd around us, so is everybody else.

SLEEPING WITH YOUR SMARTPHONE

Believe it or not, there is an animating idea behind Glass, besides the propensity of overeager technologists to foist “solutions” on us for problems that don’t actually exist. Watch Glass propaganda videos on YouTube, mostly shot on Glass, and you’re inundated with fun, dynamic people skydiving and fencing and twirling tow-headed youngsters around in idyllic settings. You’re told how Glass is supposed to reconnect you with your life, restoring you to the moments that smartphones take you out of. Wearing Glass, you will once again stand up straight and make eye contact with the world, instead of staring down like a thumb-pistoning Quasimodo. A be-Glassed Sergey Brin, in that most life-affirming of all settings—the TED talk—went so far as to call smartphones “emasculating.” And perhaps Glass is virility-restoring, or at least it seemed to do the trick for Brin. As *Vanity Fair* and other outlets reported, the married Brin allegedly carried on a lengthy affair with Amanda Rosenberg, a Glass marketer who sometimes modeled the smartwear.

But low blows aside, Brin’s point is taken. For he’s 100 percent correct about one thing: We do have a smartphone problem. According to Pew Research, in 1995—just 19 years ago—only 3 percent of Americans had ever signed on to the Internet. Today, according to a Mobile Consumer Habits study by Harris Interactive, nearly three-fourths of survey respondents reported being within five feet of their smartphones a majority of the time: Twelve percent admitted using it in the shower, 19 percent in church, and nearly 1 in 10 confessed to having used their phone during sex.

According to a TeleNav survey, 33 percent would rather give up sex for a week than give up their phones, while 22 percent would give up their toothbrush (40 percent of iPhone users). Twenty-two percent would rather skip seeing their significant other for a week than miss out on their one true love—their phone. According to an infographic by *Online Psychology Degree* (sorry, but in this dumbed-down smartphone age, infographics qualify as peer-reviewed studies), 90 percent of 18-29-year-olds sleep with their smartphone. A McCann Worldgroup study found that over half of 16-22-year-olds would rather give up their sense of smell than live without their technology.

The problem, then, is not overstated. So what’s the solution offered by the technology company that wants to be the “third half of your brain”? Google’s answer is to take all that technological distraction that you’re constantly fishing out of your pocket, that causes you to disengage from the world around you, and to put it smack in front of your eye. Because that ought to increase “mindfulness,” as the TED-talkers like to call it. Smart contact lens aspirants will have to wait slightly longer for them to actually put the Internet on your eye, though perhaps not too long, since Google just applied for the patent, and is already testing smart contact lenses to monitor diabetics’ glucose levels.

There has been, to be sure, a fair amount of Glass backlash, which is catnip for the easily bored tech press. In San Francisco, Glass Explorer Sarah Slocum claimed to be the victim of the first Glass hate crime when her Glass was ripped from her face by a hostile bar crowd who didn’t care to have a camera pointed at them. Slocum claimed she wasn’t filming until she was threatened (part of the problem with Glass is that a non-Glass-wearer never knows). But her own footage, which she later posted, shows her giving even better than she got, saying, “I want to get this white trash on tape.” (Reporters also discovered that Slocum, before she ever donned Glass, had been hit with a restraining order for filming her neighbors in their home.)

Even “technology evangelist” Robert Scoble (his actual title when formerly working for Microsoft), who has said he’d gladly give away his “privacy for utility” and who’s proven it by photographing himself wearing Glass in the shower, has decided he can gain even more attention by stink-eyeing Glass. While still hoping Glass comes to fruition (he vowed once to never take Glass off), Scoble has publicly questioned whether Glass is doomed, since Google has tarried so long in bringing it to market. Besides, Scoble noticed that Google cofounder Larry Page gave a TED talk without wearing his Glass (gasp!).

Google itself has signaled awareness of the PR speed bumps, recently issuing a “Top Ten Google Glass Myths” release, as well as a Dos-and-Don’ts list for Explorers: “Do ask for permission before taking photos or videos of

others. . . . Don't be creepy or rude (aka, a 'Glasshole')." But anyone who thinks/prays that Glass is sunk might want to guess again. First, do not invest much meaning into Glass's two-year beta run. Another Google service you might have heard of, called Gmail, spent five years in beta, and seems to be humming along just fine. (Over half-a-billion users at last count.)

And though there were only about 10,000 Explorers before a mass one-day-only April 15 sale to the public, it seems as though every single one of them has starred in at least two stories. From the sheer tonnage of Glass-related journalism landing in my inbox each day (brought to me by, what else, Google Alert), it's clear that you'd be mistaken to underestimate the appetite of the American sheeple when it comes to devouring whatever feed their technological shepherds pour into the trough.

Every industry, it seems, is practically salivating to embrace Glass, even if they're not quite sure why. Hotels have promised a spin on Glass to their customers, and a cop has testified that Glass doesn't get in his way even while he's shooting. (Why take the chance? Do you really want to explain to the family of the 3-year-old you errantly gunned down that you had an incoming text?) Numerous medical types are now experimenting with Glass, seeing if they can beam up patient X-rays, for instance, during a surgery. Because what you really want when your surgeon is putting the finishing touches on your triple bypass is him worrying about why he's down to one bar of WiFi access.

German researchers have declared they can use Glass to boost ATM security, even though numerous hackers have already proven Glass's camera is hackable. A Tokyo restaurant is experimenting with letting people use Glass to page through the entrees and place an order, as opposed to the much less cumbersome process of opening a menu. Three NBA teams have now threatened to use Glass as part of the "in-game experience." Former NFL punter Chris Kluwe insisted—at a TED conference!—that he thinks players wearing Glass could make the NFL safer (an idea too stupid to elaborate on). A USC professor is about to teach a Glass journalism class (see Kluwe explanation). And a lactation specialist has completed a trial using Glass to teach women how to breastfeed (see Kluwe and USC journalism parentheticals above).

How ridiculous has the Glassolalia gotten? Well, former third-grade teacher Eric Toth of the FBI's Ten Most Wanted List (he made the cut after Osama bin Laden was killed) was sentenced to 25 years for making child-porn videos in the elementary school at which he worked. But when discussing with the judge the lifetime supervised release he will be subjected to upon leaving the clink, he suggested authorities make him wear Google Glass, monitoring him through it to ensure he stays away from children.

No one would say giving a convicted child-pornographer a stealthy face camera is a good idea. But punishing him by making him wear Glass? Toth might be onto something.

IN YOUR FACE

Over the several weeks I wear Glass, I feel like I'm being punished myself. For it is anything but convenient. Since Glass doesn't neatly fold up like glasses when you remove them, I have to carry around a Google-issue reinforced pouch, as big as a small purse. (Apparently, in Brin's world, a man-purse is less emasculating than an iPhone.) Since I can nearly hold my breath longer than its battery lasts, I also carry around a mobile charger. When I'm not near my home WiFi, I need a Bluetooth connection, which means tethering my Glass to a smartphone. This means I now have to carry a smartphone, which I didn't do before I had Glass, and which Glass is purportedly intended to free us from. The cheapo Walmart Android I buy turns out not to be Android-y enough for Glass, so I have to upgrade. I also continue to carry around my old dumbphone—just to remind me of a simpler, happier time.

A slim minority of people, of course, carry smartphones to perform archaic tasks like actually making phone calls. But as everyone else knows, a smartphone is only as good as its apps, and Glass's are both limited and no great shakes. Yes, Glass comes equipped with some semi-enjoyable Pong-level games such as "Clay Shooter," so that I can use my cursor-head to blast clays during lengthy editorial meetings. Colleagues find the spectacle dorky enough that three of them whip out their smartphones to click pictures of me, causing me to threaten violence if anyone posts them to Twitter. With or without Glass, we are already a surveillance society.

But for the most part, other than the ever-present camera, Glass has left out the sexy/spooky stuff. In a studied effort to seem less creepy, Google is forbidding developers from adding facial-recognition apps to the official Glassware store, even though some have already been created, such as NameTag. For now, Glass is holding the moral line on that particular privacy concern, a policy which I'm dubious will continue, since Google's historic attitude toward privacy was best voiced by trusty Chairman Schmidt: "If you have something you don't want anyone to know, maybe you shouldn't be doing it in the first place."

But even if Glass never officially sanctions facial recognition, Facebook has just announced its own DeepFace software, which recognizes human faces with 97.25 percent accuracy (the human brain does the same with 97.53 percent accuracy). So ID'ing strangers could soon be as easy as winking a picture on your Glass, sending it to your

Facebook page, then waiting for a match. So much for an anonymous stroll in the park.

Google has also taken the high road by banning Glass porn apps, although that hasn't stopped porn app developers from preparing for the eventual moratorium lift. MiKandi, a "mobile adult software applications store," has already shot the very first porno with performers wearing Glass. Another developer has come up with "Sex With Glass," in which two Glass-wearers can see what their partner is seeing as they have relations. In other words, the Ultimate Selfie.

But even if Glass made this app available, there'd be no cause for me to download it. Not only does my wife, Alana, not have her own Glass, she makes perfectly clear when I return home wearing it, "I'm planning on staying as far away as possible from you for the next several weeks." Indeed, I come in for some rough familial treatment over my new eyewear. My mom refers to them as "your dork glasses." My children are horrified, begging me to take them off when I pick them up from school. "Please, Dad, don't roll down the window and talk to anybody," says Luke, my 14-year-old.

When we go out to a restaurant one night, and I try to show off my Glass to the in-laws, telling them I will Google directions to the southern Maryland spot just 20 minutes from our house, Glass refuses to connect until we're pulling into the parking lot. Once it finally does, it gives us directions to some location in Oklahoma. My 79-year-old father-in-law openly scoffs at my cutting-edge technology: "Next time we go out, I'll bring my rotary-dial phone." In the parking lot, we run into one of my son's teachers, Mr. Forrester. I ask him if he'd like to try on Glass. "No," he says. "It's just not my thing, I don't need augmented reality. I don't even like regular reality."

Inside the restaurant, as the kitchen staff files by to curiosity-gawk, and patrons spy what could be their facial future, a waiter hands us hot towels. "Is there any way you could put that over your head?" Luke asks. In the car on the way home, Alana is as accepting as ever: "It annoys me to look at you every time I see those things draped on your nose. I just want to smack you." But I get the last laugh, when I accidentally wink a picture of my shoe.

I spend an entire day signing up for Glass apps, everything from horoscopes to weather alerts to multiple news sites, most of which are pushed in viewable cards to your

scrollable "timeline." A new card announces itself with a "clink" through the bone-vibrating transducer. The transducer, which is great for hearing clinks, isn't so great for hearing phone calls. When I try to talk to my wife via Glass, thinking perhaps it will go better if she doesn't have to physically see me, it sounds like she's being waterboarded by Larry Page on the other end of the line.

But so many clinks come my way, one friend even starts calling me Colonel Clink. I get clinked when "lunacy" comes in from my Word of the Day app. I get clinked when fellow Glass Explorers in my region "discover" something new. For instance, Tysons Corner Mall was discovered by some Explorer named Drew. (Great job, Drew. Tysons Corner

is the largest mall in the area and has been here since 1968. You're a regular Shackleton!) I get clinked by the never-ending headlines from the unceasing news stream now constantly flowing in front of my eyeball. Essential, breaking-news developments, at least half of which seem to be selfie-related:

Colin Powell's 60-Year-Old Selfie Schools Your Mirror Pic; Madonna Instagrams Photo of Her Armpit Hair.

I'm also regularly clinked by my blogger friend Jim Treacher, who has unfortunately discovered I'm on Glass, and who now serially texts commands to my Glass from his lair in Indiana: *Okay, Glass, which wine goes best with Chicken McNuggets? . . . Okay, Glass, tell me what to say to these people pointing and laughing at me.*

Glass's voice recognition is a bit spotty. When my dad visits, and I ask Glass to Google one of his childhood classmates, Bucky Sabina, Glass returns results for porn star Sabina Black. My dad says thanks but no thanks. Next time he'll just try Classmates.com. Another time, when I'm voice-texting Treacher, and want to tell him to forward something, saying "send that right over," Glass reads my utterance as "send that ass right over." I see the words appear in my prism, but fail to cancel in the split second Glass gives me before sending. Treacher's now wondering if I've changed more than my aversion to new technology.

My other apps don't work so swimmingly, either. Though I'm not Jewish, I sign up for the "Jewish Guide for Glass" just for the test-drive. One day, while walking around D.C., I hear a clink. Glass tells me I'm at a particular synagogue. I'm not, but I've just walked in front of Loeb's Deli, so maybe close enough.



When I hit up my recipe finder, I decide to keep it simple, asking Glass for a recipe for “fried bologna.” It returns recipes, in order, for “egg in a hole,” Stromboli, a drink called “Liquid Nuclear Spice,” and green bean casserole. When I try again with shrimp scampi, I am told instead how to fix “Flora’s Simple Deviled Eggs.” And to think we used to be stuck with cookbooks. How did we live that way?

Even with the misfires, as the days drag on, I find myself using Glass more and more. Not because I’m interested, or even out of journalistic duty. But because it’s literally right in my face. I can either look around it, or look directly into it, and the latter seems easier than the former. I use Glass by default—because it’s always there.

With my ancient flip phone, I rarely, if ever, have the problem of getting pulled away from the physical world when I’m not near a computer. It’s the whole reason I still carry one—because I abhor the electronic monitoring bracelet. But now that the computer is right on my eye, my standards slacken. When playing tennis with Luke, I get some decent point-of-view footage of him during a volley. But between points, I find myself asking Glass to Google Roger Federer’s backhand, even as my own suffers thanks to my partially Glass-obstructed vision.

After a long fishing drought because of all the brutal winter weather, I find myself fly fishing one day with Glass. Ordinarily, there is little in this world that absorbs me as singularly as fishing. And I do hook up with a rainbow trout, which grudgingly takes my Zug Bug. Except instead of just living in that moment, I figure I’d better get a photo of it with Glass. But my wink function is on the blink. So I nearly kill the fish before I can release it, after fiddling around by hand, scrolling for the right screen. Then, of course, I have to voice-text fishing buddies that winter is over. Then a clink alerts me to a *Mashable* story: “8 Ways Tech Has Completely Rewired Our Brain,” which a Glass app narrator reads to me. The waterboarded narrator talks about “phantom vibration syndrome,” detailing a survey in which 89 percent of undergraduates report having the sensation that their phone was vibrating even when it wasn’t.

Here I am, standing in one of my favorite places—thigh-deep in water—where I should be communing in the moment with some of my favorite people (fish). But instead, I find myself anticipating the next face clink. Here’s one now. It’s Treacher, again: *Okay, Glass, remove the entire concept of living in the world with other human beings.*

NONETHELESS, EVERYBODY WANTS ONE

Despite the familial heckling, what’s most surprising about my weeks with Glass is not the hostility, but how nonchalantly most accept it, with plenty lustily embracing it, even when it violates their privacy.

Sure, there are skeptics. A homeless woman, wearing a rain tarp and guarding her trashbags on the streets of D.C., immediately recognizes what I’m wearing. “Ohhh! You got the Google Eye Glass!” (A recent survey showed half of all Americans recognize Glass, even though it hasn’t been commercially released—a rather remarkable feat of Google hype.) When I ask to take her picture, she refuses, walking away, saying, “I’m scared of you. You’ve got the camera.”

Then there is my bartender, Joseph, at Townhall, a D.C.

watering hole. I work his customers with Glass, and while he’s friendly to me as I explain my journalistic/sociological project, he says if this picture-taking face atrocity ever catches on, “It’s just another reason for me to throw you out of the f—ing bar.” He understands the guiding philosophy of Glass, and knows Google is peddling it as a seamless part of your technologically integrated future. But he’s not buying it. “You know what’s seamless?” Joseph discourses.

“Breathing. That’s seamless. Your f—ing heart beating is seamless. That—” he says, pointing at my tangerine dream, “is not seamless.”

He’s not a big fan of the Google-ization of America. He thinks it’s crippling us. The thirtysomething Joseph says a while back he dated a girl in her early twenties. She lived in Connecticut, and she was driving down to see him. Along the way, her phone died. “It was like a disaster,” he says. “She didn’t know what road she was on, and didn’t know how to call collect. She stopped at a gas station, where she Googled my name. She called me, and was in a panic. I was like, ‘Where are you?’ She said, ‘I don’t know. On the highway.’ I said, ‘Is it a big highway? Is it 95?’ She said, ‘I think that’s what it’s called.’”

Joseph, however, admits that as a part-time landlord, he has leaned on Nest, a service Google recently purchased for \$3.2 billion that lets you remotely climate-control your properties. Nobody’s pure. Even Joseph recognizes that technology is infiltrating every area of our lives. Especially with “wearables,” which are all the rage, and of which Google Glass is only the start. Many tech tea-leaf readers say that soon enough, everything from your



Glassholery at the altar rail

earrings to your jogging shoes will be as smart as you are.

And most of those I encounter aren't like Joseph. Walking down the street in Georgetown, I experience plenty of noncommittal, if curious, eyeballs. People look at you like you're either a B-list celebrity or you've been in a disfiguring accident, or maybe like you're a B-list celebrity who was caught in a house fire and escaped with second-degree burns. But nearly everyone who makes contact does so because they want the Glass experience: How do I buy it? When can I have it? Please, can I try it on?

At Victoria's Secret, I ask a saleswoman to hold up some panties so I can photograph them with my Glass. "For my girlfriend," I say as an unconvincing afterthought. She willingly goes along. When I start aiming for the dressing room, she does tell me no photography is permitted in the store. I tell her I could be winking more pictures right now. But instead of regarding me as some suspicious pervert, as she likely would if I were behaving this way with a normal camera, she says, "That's really neat!"

One Sunday, I take my youngest son, Dean, to church while wearing Glass. Not to our regular church—my wife refuses to be seen with me there. But to Middleham Chapel, one of the oldest Episcopal churches in Maryland (founded 1684). I'm sure the minister is perfectly adequate, but I don't really hear him. I have too many clinks coming in on my feed: *N7 Governor Christie at CPAC*. Not to mention Traacher: *Okay, Glass, search Google Images for this type of sore*. Also, I was achieving a new personal best on Clay Shooter, as my cursor head nearly knocked into the septuagenarian lady next to me. At least until I catch an elbow from my 11-year-old. "Dad," he says through clenched teeth, "I can hear you," he says of me blasting virtual clays out of the sky. I have to figure out how to mute this thing. Also, I hope the minister winds it up soon. My battery's running low, and I'm not about to break out my mobile charger. That would be in bad taste.

Finally, it's Eucharist time. Dean's pretty thrilled to receive communion. Back in our evangelical church, they serve grape juice instead of wine. He can't believe they're not going to card him. While the priest is serving us at the altar, I wink a few pictures. I might be a Glasshole, but it still feels sacrilegious. So I confess to the priest in the receiving line after church. "Wow, that's cool!" he says.

On the streets of D.C. one afternoon, I pass a homeless guy named Mark Parker. Caked in filth, he sits Indian-style on the ground, holding an "I'm hungry" cardboard sign. I

feel like I should give him a few bucks, though I'm sorta busy with my feed: *Rihanna and Drake Are Back Together for Real this Time*. But he calls out to me: "Cyborgs live!" Mark's very excited. He knows what Google Glass is, and this is his first time seeing it, so I let him have a go. "Too bad you don't have another camera," he sympathizes. "You could take a picture of me with them on."

"This is neat!" he says. "How much are they now?" I break the bad news. "Oh my God!" he exclaims. He thinks he's going to wait until the price comes down, into, say, laptop range. I ask Mark if it isn't more important that he buy something like, you know . . . food. "It depends on day-to-day," he says. He tells me he has a blog—washington-wordwarrior.blogspot.com—and sometimes he gets an ad or two, and can afford a little more. (Google ads, he says, don't pay much.) I give Mark 10 bucks and tell him to buy something to eat, not to put it in his Glass fund. "I won't, I promise," he says. "They're still a little out of my reach."

I wear Glass to all manner of places where I expect to get thrown out—where I probably should get shown the door. But I pass through unmolested, or at least get much further than I would expect to. I wear Glass to a District Court hearing one day, as I have to go before a judge to

attempt to get a driver's license point removed for a speeding ticket. The sign on the courtroom door warns: "No weapons, cameras, videos or cellphones." I'm three-for-four, four-for-four if you count the ability to trample privacy with my face computer as a weapon.

As I'm called before the judge, I activate my videocamera. Maybe he's so busy he doesn't care. Maybe he has no idea what I'm wearing. He never asks, and he dismisses my point. While I take a seat, waiting to get processed, a bailiff swoops in like a bat out of hell and tells me I have to remove "that," whatever it is. (Bailiffs must not read *TechCrunch* like homeless guys do.) But it's too late. Unbeknownst to him, I already videotaped the entire proceeding.

Recently, an Ohio Glass-wearer was pulled out of a movie theater and questioned by federal authorities, who suspected him of piracy. (Though he wasn't taping.) But when I go to the movies at D.C.'s E Street Cinema, I pass through without a hitch, even stopping along the way to buy a Foster's Lager at the concession stand. I take my seat in *Her*—the Spike Jonze film that's set in the near future, where a man (played by Joaquin Phoenix) falls in love with his operating system (who is never seen, since "she"



In court: the tardy bailiff

is artificial-intelligence software, but who is given voice by Scarlett Johansson). Without a peep from fellow filmgoers or (I'm relieved to say) federal authorities, I effortlessly videotape—without doing anything to call attention to myself—a few minutes of a man and his computer bringing each other pleasure. It's a love scene that is perhaps the perfect metaphor for our time. (Note to Feds: I subsequently erased it and did not distribute it.)

On another outing, I light out with my brother-in-law, Eddie Logan, for a night at Maryland Live! Casino in Hanover, Md. Scores of casinos throughout the country have already banned Glass, for obvious reasons. But this one is still uncharted waters. Before entering, Logan gives me his strategy. He doesn't want to sit next to me at any gaming tables, but rather, across from me, "so I can videotape security slamming you up against the slot machine."

But his fears are unfounded. As I steel myself while we walk through security, the door guy asks, "Hey, what do you think of Google Glasses?" We talk Glass for several minutes, until I ask him if he's going to let me in. Sure, he says. So long as I'm not lingering around tables photographing cards or people. His security colleague walks up on us. I tell his friend I just winked a picture of him, does that bother him? "Not at all," he says, "I'm very photogenic."

Once in, however, I do, in fact, linger like a bad cold, as well as photograph people while walking right up behind blackjack and poker players. My brother-in-law wants to warm up on slots, and after hitting for a few hundred bucks, he's ready for blackjack. He takes a seat at a table, and I stand behind and off to the side of him, with a view of others' cards. Logan, who is very lucky by temperament, gets blackjack three times in a row. I could swear on a stack of Glass operating instructions (if they had any) that I had nothing to do with it. But if I were one of his tablemates witnessing his sidekick with the face computer, I'd certainly be suspicious.

Standing off to my left, not five feet away, is a pit boss. I'm girding to get thrown to the floor by security, but instead, she asks what I'm wearing. I explain Glass, and its functions, saying I can even do Google searches. Like this one, and then I say, "Okay, Glass, Google 'counting cards.'" The cardinal no-no at a blackjack table. I ask her if she wants to see my counting cards results, and I slide the glasses on her, but the screen goes black in the handoff, or maybe her eye isn't in alignment. "It's just because of

me," she says, taking the rap. "I'm blind, I know." Yes, she is blind, to the cheating possibilities of the shiny-new technology I'm showing off in front of her. "You'll just have to take my word for it," I say.

I leave Logan to his winnings, and go fetch us drinks at the bar, where I wink several more photos of casino patrons. Finally, a jacketed security tough swoops in. He seems to know the score and says I either have to remove Glass or leave. I tell him I'd prefer to leave. I'm missing out on a lot of virtual life and need to get back to my feed: *Shaq: I Spend \$1,000 a Week on Apps; Robots Could Take Over Half of American Jobs*. But first, I tell the burly bouncer, I'd like to get a picture for the road, of the only man in this Godforsaken place who has the smarts to stop me. "Uhhh, sure," he says uneasily. I take one, but it doesn't turn out. Glass doesn't

have a zoom. I break the bad news, informing him we need another go. To my surprise, he sits still for retakes.

GOOGLE IS WATCHING YOU

One man who's not sitting still is Adam Wood, who helms "Stop the Cyborgs," a U.K.-based group that was launched to protest Glass and to sound the alarm about the coming

onslaught of wearables. I make Wood for a card-carrying Luddite, but I'm mistaken. He's a software developer and machine-learning expert who has a Ph.D. in kernel methods (a class of algorithms for pattern analysis). He used to be a "classical engineer," he says, in our lengthy correspondence, "in love with cool technology and not thinking too much about the political and social implications."

Then Glass came along, and he realized there's a big difference between techies playing with this stuff in a lab versus what it looks like when "data-mining corporations . . . annex private property and occupy people's bodies. People think of devices as an extension of their body, when it is actually an extension of the data-mining corporation that built it." Since wearable tech isn't put back into a purse or pocket, the social signals indicating someone might be recording are lost. But even more worrisome, Wood says, is that "normalizing wearables is a step towards making mass use of implantables acceptable. After all: 'Isn't a smartphone just a phone with a few added features, a wearable device just like a smartphone but on your body, and an implant just like a wearable device but under the skin?'"

To the uninitiated, this might sound like the paranoid



Capturing 'Her'

delusion of the tinfoil-hat set—laughable, even. But guess who’s not laughing at all at these prospects? Google.

The same Google whose cofounder Page once told Steven Levy (author of Google biography *In the Plex*) that he foresees Google searches taking place “in people’s brains. . . . Eventually you’ll have the implant where if you think about a fact, it will just tell you the answer.” The same Google whose chairman, Schmidt, said, “I actually think most people don’t want Google to answer their questions. They want Google to tell them what they should be doing next.” The same Google whose chief economist, Hal Varian, has said that he thinks the next stage is implants and that “you will be continuously connected to the web in 2020.”

Whether ever fully realized or not, these notions go several privacy-ticks beyond Google’s usual cavalier disregard. (They’ve been given the worst privacy rating of any web company by Privacy International.) What all this signals to Adam “Stop the Cyborgs” Wood is that this new wave of wearable tech means putting networked mobile sensors on people, allowing those who control the technology to build a giant control loop, with we-the-people herded right into the middle of it. The sensors already know everything about you—from who you are to where you are to what you’re doing. Crunching these data can have ramifications on everything from insurance risk to productivity to sociability to political inclination. (There are already stories of companies using wearables to monitor their employees’ health and even their sleep habits.)

The natural terminus, asserts Wood, as society becomes both techier and control-freakier, is that your behavior will be monitored by algorithms. “And if devices become very popular,” he warns, “opting out will have a high cost. After all, ‘How can people trust you if they don’t know your trust rating? Surely you must have something to hide?’” Wood asks, “How long before you get advised [by your employer] to go to bed earlier on week nights at your next performance review? . . . Fundamentally, we need there to be spaces which are unconnected, moments which are unmonitored, and we need data to be imperfect.”

Weirdly, my own trust rating already seems to have taken a hit with Google. In the middle of reporting this piece, I get an unsolicited email from Chris Dale, who heads Glass’s communications shop. He says he “heard through the grapevine” I was working on a story, and

would love to help out. Fair enough. I’ve had proactive flacks do that before. But a week later, when I email him to ask some anodyne questions about the mechanics of the Explorer program, he expresses concern.

His concern is “that some folks who ran into you while you were wearing Glass out in public remarked that they felt you were being obnoxious and confrontational and a little evasive in terms of who you were and what outlet you were representing.” Strange. I thought nearly all of my interviews were friendly. And even if I partially played the role of the Glasshole, I nearly always let people know who I am and what I was up to. But even if I didn’t—how does he know? I didn’t speak with anyone in the field who worked for Google. Who would go through the trouble of tracking down some flack in Mountain View, Calif.,

to report me? And anyone to whom I was being even marginally “confrontational” likely would have seen it that way because I’d sometimes argue on behalf of their privacy, even as they seemed perfectly willing to abdicate it.

Like a principal summoning a wayward student to the office, Dale, who in addition to heading Glass’s communications outfit seems to think he’s my editor, asks me to call him.

I pass, telling him I’d just as

soon keep our exchange in print, so I have a clear record of what gets said. After disabusing him of whatever he is “hearing second-hand” (his words) and explaining my reporting style, I ask him six more questions about Glass. But not before telling him I’d also love to hear who his “mysterious second-hand informer” is, while he should keep in mind that “I likely have better documentation of what was said than they do.” Unless, that is, Google has hacked my Glass. Have they? No, they wouldn’t do that. Especially not after two researchers at Cal Poly came up with an app that would allow others to hijack your camera, just to see if they could. That seemed to displease Google, so I don’t think Google would do that, I jab (sending Dale a link to the Cal Poly story).

But the truth is, Google wouldn’t have had to hack my camera. Could they have seen a testy interview that I taped on Glass? Wouldn’t they have access to that data, the same way they have access to my Gmail account, to my search requests, to God knows what else? Were they spying on me? All interesting questions. But it doesn’t look like I’ll ever know the answer. Even weeks later, Dale hasn’t responded.



Don't mind me—I'm just checking out your cards.

A FOLLOWER OF '1984'

One of my last Glass stops is a night out drinking with an old friend, and one of my favorite writers, Eddie Dean. A good ol' Richmond boy by upbringing, Eddie has worked every gig from driving an ice cream truck in the Blue Ridge Mountains to collecting hog entrails at a slaughterhouse to bring back to the UVA medical illustrators' department, for which he was partially compensated in free hot dogs. Eddie made his bones locally in the '90s, writing gorgeous humanity-laden pieces for the *Washington City Paper* on everything from blues singer Skip James to dunk-tank carnival clowns to lost-white-trash cultural snapshots of drag racing in Manassas. These days, he writes books, such as when he helped bluegrass legend Ralph Stanley knock out his memoir, *Man of Constant Sorrow*.

I call on Eddie to help me change my scenery a bit. While I have plenty of roughneck bars close by where I live around the Chesapeake Bay, I want him to accompany me to some good hillbilly bars (one of his many subspecialties). I will wear my futuristic face computer into these bastions of the past and report the results.

Eddie, I should note, is one of the few people I know who are more technologically challenged than me. He only carries a flip phone in case his kids get kidnapped and he needs to know the ransom demands. He prefers offering Xeroxes of stories he likes (Xeroxes!) instead of sending you links. When I once complained about having to transcribe interview tape, he said, "I'm still transcribing 10-year-old interviews with long-dead country singers and jazz sidemen. . . . I guess we're about as hipster as a couple of ninth-century monks transcribing Jerome's Vulgate on a sheepskin parchment in some Saxon abbey, running out of good ale and firewood."

Eddie's first choice is Hank Dietle's, a legendary roadhouse in Rockville, Md. It now sits in the bosom of yuppie sprawl, but boasts the very first beer-and-wine license ever awarded in Montgomery County. I meet Eddie in the parking lot—he comes at me with his shock of salt-and-pepper Samuel Beckett hair and a stack of Xeroxes tucked under his arm. He wants to know our plan. "I'm just trying for you not to get killed," he says.

When we get inside, two things are immediately clear: Nobody's getting killed, and it's been a long while since

Eddie drank here. It still looks like an old roadhouse—carved-up wooden booths, linoleum floors, pool-table rules mandating 8-ball only, as nobody needs any 9-ball nancies in here. But the crowd is—how to put it?—soft. Khakis and blue oxford shirts, a white-collar, Beltway-bandit happy-hour scrum. I tell Eddie if there are any bar-clearing brawls in here, we're likely to finish in the top five percentile of combatants, which is sad, us being journalists and all. The barkeep still keeps a bat behind the draining-board, but whatever for? To bring down discipline if someone wears pleats instead of flat-fronts?

Eddie feels awful. "Sorry, man," he says. He used to write in here, and starts reminiscing about old times, when day-tipping rotgut alcoholics would push pen-

nies over the counter for one drink. He points to the space under the pool table where you might see two guys fighting, one cracking the other's skull against the floor like a cantaloupe. "God, I miss that sound," he says, almost teary.

No worries, I tell him, we'll make it work. We order a pitcher of beer, and after two glasses of lubricant, I lunge into the crowd, taping people, telling them I'm taping them, basically being a Glasshole, just trying to get a rise.

I can't seem to agitate anybody. One guy asks me, "Can we put it on?!!!" Another tough guy wants to know, "How do you scroll?" Others take pictures of me with their iPhones. Everybody's so used to being Instagrammed, Tweeted, and Facebooked—what's one more on the dogpile? Most of them, I'm told, work for the Financial Industry Regulatory Authority, just down the road. ("Montgomery County is totally being taken over by government drones," Eddie says.)

Finally, a whiskered older gent in a blue-crab-adorned Maryland sweatshirt that reads "Don't bother me, I'm crabby" squares up to me. It seems he's been eavesdropping on my conversations, and I'm guessing he's about to tell me where I can put my Glass, which is still rolling. His name is Charles Wilhelm, a retiree who used to work for the Nuclear Regulatory Commission. Just so he's clear, I inform Wilhelm that I'm taping him with my face. Then, I prepare to take my medicine.

"It doesn't matter," he says. Huh? "Because you'll find in this society, we're all subject to videotaping." But, I point out to him, I'm a private citizen, taping another private citizen for no compelling reason. Just because I can. What if



You can't wear those here. But you can take my picture.

he were here with his girlfriend instead of his wife, and I posted it on the Internet? “So?” he shrugs. “Really, so that’s it?” I ask him. “Yes,” he says, nonchalantly. “Why?” I ask. “Because I’m a follower of George Orwell’s *1984*, and so I’m a believer in the concept of community observation.” I point out that I’m fairly certain Orwell was trying to make the opposite point, that his was a critique, not an endorsement, of a surveillance society.

“I disagree,” he replies, obstinately. “Because in my view, you would have less terrorism if you had more observation by the state.” I wave my hand at the surrounding khakis, pointing out that I’m fairly certain I’m not recording any terrorists in Hank Dietle’s. “That’s irrelevant,” huffs Wilhelm. “You can still explode a fairly good device.”

“And maybe this is it,” I say, pointing to my Glass.

“So what’s your point?” he asks. I tell him I’m just giving him a hard time. “Have a good evening, sir,” Wilhelm says brusquely, stomping off.

I trudge back to my table, defeated, relaying the conversation to Eddie, who is gob-smacked. “So he read [*1984*] as utopia instead of dystopia?” Seemingly, he did. I give up. I return to our pitcher, and my clinks—the Glass headline feed is stacking up on me: *Man Accused of Murder over Theater Texting Was Also Texting*; *Study: Metadata DOES Reveal Sensitive Data About Individuals*; *Famed Butt-Selfie Taker Jen Selter Is in ‘Vanity Fair’ Now*.

Eddie is unimpressed with my clinks. He says each morning, when he wakes up, he listens to Merle Haggard to hear the voice of God. Not the greatest hits, not in the hipster way that Brooklyn-neckbeards claim to listen to Old Country. He listens to records like Haggard’s *The Land of Many Churches*, the gospel stuff, complete with recitations. “It’s my way of seeking the Lord. And to get rid of hangovers? It’s great. But you seek the Lord with Merle Haggard.”

To that end, Eddie wants to know something about Glass. When the clinks are always coming, how do you hear that voice, or any other voice? “I mean, who knows where it’s going to stop?” he thunders. “Can we multitask our way to the pearly gates? Because we are not going to be able to hear that quiet voice from the Man upstairs! What if He’s trying to get in, and we’re on this?” he says, pointing to my face computer. “He might not have full access.”

These days, we blast the noise full-tilt, around-the-clock. By contrast, Eddie invokes a favorite quote, one originally attributed to the French composer Claude Debussy and improved upon by Miles Davis, which goes: “Music is the space between the notes. . . . It’s not the notes you play, it’s the notes you don’t play.”

We pull up anchor to hit another favorite Eddie spot, JV’s, a half an hour away in Falls Church, Virginia. I call the bar to get the address and directions, by now afraid to rely on my Glass. I don’t want to end up in Oklahoma. The woman on the other end of the line tells me it’s 6666 Arlington Blvd. “Ohhh, the mark of the Beast,” I exclaim. “No, it’s not, sugar,” she corrects me. “There’s one extra 6 in there.”



Hide the mistresses—this is getting posted.

We arrive at JV’s, and this is more like it. There’s a loud, live band, and people with cowboy hats instead of khakis, even if there’s still lots of e-cigarettes, instead of the old-fashioned cancer-causing kind. “There’s no escape,” Eddie shrugs. As he secures us more beer, I approach a guy at the end of the bar, the meanest-looking hombre I see in the joint, drinking Bud out of a can. He’s enough of a regular that he seems to dart behind the bar whenever it

suits him. He’s tall, built like a middle linebacker, wears a sleeveless shirt and work pants.

But he’s not actually mean. His name is Kevin, and he’s a heating and air conditioning repair man. I show off my tangerine dream, and ask him to try it on. Instead, he says he’d like me to try on some “beer goggles”—trick welder’s goggles that hang on a hook behind the bar. I assent. He fetches the goggles and reaches for a “Women of Seagram’s Gin” deck of cards, which he places upright on the floor. He tells me to put on the goggles, then to kick the box over. I try, but kick a foot-and-a-half wide of the deck. Everyone has a good laugh over my vision impairment.

When I ask him to give my Glass a whirl, however, he passes. He has no interest in having the Internet on his eye, he says. Nor does he use the Internet when it’s not on his eye. I don’t know whether to pity or congratulate him, or take him to a museum as one of the last living specimens. Adopting my role as the Glasshole, I tell him, “You’re disconnected from the world, my friend.”

Kevin takes another slug of Bud, then shakes his head without remorse. “No, I’m not,” he says. “The world is disconnected from itself.” ♦

Kennedy's Question

How will the Court decide Hobby Lobby?

BY ADAM J. WHITE

We often think of the Constitution as a two-part document: first the original 1787 text, which primarily establishes the government's structure; and then the amendments, which primarily set forth our rights. But it's not nearly that simple: Our government's structure—its federalism and its separation of powers—was devised not just to promote energetic government, but also to secure individual liberty. Or, as Alexander Hamilton stressed in *Federalist* 84, “the truth is” that the original structural Constitution “is itself, in every rational sense, and to every useful purpose, a bill of rights.”

In recent years, the relationship between structure and rights has been emphasized by Justice Anthony Kennedy. And his comments at oral argument in *Sebelius v. Hobby Lobby*, the case challenging the Department of Health and Human Services' “contraception mandate” on religious liberty grounds, suggest that he may be returning to that theme once again.

Because Justice Kennedy occupies the Court's ideological and tactical center, lawyers and pundits invest great effort in analyzing where he might land in any given case. In 2011 and 2012, as the constitutional challenge to Obamacare's individual mandate made its way to the Court, all were focused on Justice Kennedy's well-established habit of invoking the commerce clause, which divides power between the federal and state governments, as a bulwark of liberty.

Specifically, observers turned to Kennedy's separate opinion in *United States v. Lopez* (1995). In that case, the Rehnquist Court held that the commerce clause did not empower Congress to regulate guns unconnected to interstate commerce. But Kennedy also wrote separately to stress that, “though on the surface the idea may seem counterintuitive, it was the insight of the Framers that freedom was enhanced by the creation of two governments, not one.” He continued by quoting James Madison's *Federalist* 51:

In the compound republic of America, the power surrendered by the people is first divided between two distinct

governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

Kennedy reiterated these federalist themes in *Bond v. United States* (2011), this time writing for the majority to explain why an individual had “standing” to vindicate the states' commerce clause interests in court. Again invoking Madison, he stressed, “Federalism has more than one dynamic.” While “the federal structure serves to grant and delimit the prerogatives and responsibilities of the States and the National Government vis-à-vis one another,” federalism protects more than just the respective domains of our national and state governments. “Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.”

And so a year later, when the Supreme Court decided the Obamacare individual mandate case, these federalist themes were central to the conservative justices' opinion that the mandate exceeded the limits of the commerce clause. While the opinion was signed jointly by Kennedy, Scalia, Thomas, and Alito, the distinctive tones of Kennedy's previous opinions rang clearly: “Structural protections—notably, the restraints imposed by federalism and separation of powers—are less romantic and have less obvious a connection to personal freedom than the provisions of the Bill of Rights or the Civil War Amendments,” the justices observed. But “the Framers considered structural protections of freedom the most important ones, for which reason they alone were embodied in the original Constitution and not left to later amendment. The fragmentation of power produced by the structure of our Government is central to liberty, and when we destroy it, we place liberty at peril.”

Even more recently, Justice Kennedy commingled notions of federalism and individual liberty in his opinion for the Court in *Windsor v. United States* (2013), striking down the Defense of Marriage Act's federal definition of marriage. There, Kennedy held that the federal government's denial of recognition for same-sex marriages violated the Fifth Amendment's due process (and implicit equal protection) clause, but only after reading the Fifth Amendment against the background of traditional state authority, rather than federal authority, to define marriage.

Adam J. White is a lawyer in Washington, D.C.

Again, Justice Kennedy's habit of connecting federalism to liberty is by now so well established that it borders on conventional wisdom. But Madison's famous words in *Federalist* 51 were not limited to federalism. Madison saw liberty protected not just by the division of power between the national and federal governments, but also in the division of power, within the national government, "among distinct and separate departments"—or, the separation of powers among the legislative, executive, and judicial branches, which ensures that the national government "will be controlled by itself."

This second structural protection seems to be on Justice Kennedy's mind, and in the latest constitutional case involving Obamacare, no less. But Justice Kennedy's allusions to this constitutional theme, at recent oral arguments, have gone largely unnoticed.

In *Sebelius v. Hobby Lobby*, the Hobby Lobby arts-and-crafts company argues that the Health and Human Services Department's "contraception mandate" violates the company's (and its owners') right to freely exercise religion. Their claims are rooted in the First Amendment's fundamental protections, but they are more immediately protected by the Religious Freedom Restoration Act, a 1993 statute that provides that generally applicable federal laws should not be enforced in a way that would "substantially burden a person's exercise of religion," unless the law is the "least restrictive means of furthering" a "compelling government interest."

In the run-up to the *Hobby Lobby* case, most discussion focused on questions of whether corporations actually have free-exercise rights, or whether HHS's regulations truly burden those rights to an unlawful degree. But at oral argument, as legal writers Ed Whelan and Josh Blackman noted, Justice Kennedy seemed keenly interested in questions of constitutional structure. This time, his questions went not to the allocation of power between the federal government and the states, but the allocation of power among Congress and the executive branch.

Congress did not impose the contraception mandate on employers; the administration did. The Affordable Care Act directs large employers only to provide employees the opportunity to enroll in "minimum essential coverage," pursuant to HHS's implementation of the act. And so, with Solicitor General Donald Verrilli at the podium, Kennedy stressed the fact that this collision between Obamacare and religious liberty arose not because the statute itself forced HHS's hand, but because HHS itself had used a vague statute to force the constitutional issue:

Now, what—what kind of constitutional structure do we have if the Congress can give an agency the power to grant or not grant a religious exemption based on what the agency determined? I recognize delegation of powers rules are somewhat more abundant insofar as their enforcement

in this Court. But when we have a First Amendment issue of this consequence, shouldn't we indicate that it's for the Congress, not the agency, to determine that this corporation gets the exemption on that one, and not even for RFRA purposes, for other purposes?

By mentioning "delegation," Justice Kennedy seemed to allude to the "nondelegation doctrine," a longstanding principle of constitutional structure rooted in Article I, Section 1 of the Constitution. That provision vests Congress, and Congress alone, with "all legislative powers" granted to the national government. Thus, the nondelegation doctrine, as developed by the courts, prohibits Congress from "delegating" its legislative power to any agency.

It is not a doctrine that lends itself easily to bright-line standards—as Justice Scalia has observed, "the debate over unconstitutional delegation becomes a debate not over a point of principle but over a question of degree." In practice, as seen in the Court's precedents, the nondelegation doctrine requires only that Congress specify an "intelligible principle" to guide and limit the agency that applies Congress's enactment.

In fact, Kennedy's allusion to "delegation" may have surprised observers, if only because the Court has so rarely invoked the doctrine to strike down statutes. As the Court itself noted in 2001, only twice in the nation's entire history has the Court used the doctrine to strike down a federal statute—both times in 1935. Or, as Cass Sunstein, a law professor and former Obama White House official, wrote in 2000, "We might say that the conventional doctrine has had one good year, and 211 bad ones (and counting)."

But while the nondelegation doctrine only rarely causes a court to strike down a statute completely, the doctrine can play a substantial role in how the courts interpret statutes. As Sunstein wrote in his influential article,

But is the nondelegation doctrine really dead? On the contrary, I believe that the doctrine is alive and well. It has been relocated rather than abandoned. Federal courts commonly vindicate not a general nondelegation doctrine, but a series of more specific and smaller, though quite important, nondelegation doctrines. Rather than invalidating federal legislation as excessively open-ended, courts hold that federal administrative agencies may not engage in certain activities unless and until Congress has expressly authorized them to do so. The relevant choices must be made legislatively rather than bureaucratically.

In short, the nondelegation doctrine offers a fundamental principle to guide courts in the work of interpreting statutes. Congress often writes statutes in very broad terms, leaving substantial room for willful agencies to make major policy decisions. Delegating too much discretion to an agency would undermine the Framers' basic vision, stated best by Madison in *Federalist* 51, that legislative and executive power must be kept separate, so that

the national government “will be controlled by itself.” Thus, when a court is called upon to review an agency’s implementation of a statute, the nondelegation doctrine reminds that it may be necessary for the court to construe the statute somewhat more narrowly, to vindicate the Constitution’s separation of powers.

But the nondelegation doctrine differs slightly from more common separation-of-powers questions. Usually, the separation of powers is intended to guard against the risk that one branch will encroach upon the powers of the other. But sometimes the problem is not that a branch wants too much power, but too little—that is, the branch wants to avoid responsibility for its own actions. Thus, the nondelegation doctrine ensures Congress’s accountability, by preventing Congress from blithely handing to agencies the power to make important policy choices that ought to be decided by Congress in the first instance.

In the federal courts, that point has been made eloquently by . . . Justice Kennedy, in a series of opinions that have attracted nowhere near the attention that his federalism opinions attracted. Indeed, he made this point long before his appointment to the Supreme Court. In 1981, when he was still a judge on the U.S. Court of Appeals for the Ninth Circuit, Kennedy heard the case of *Chadha v. INS*, challenging the constitutionality of a federal law empowering each house of Congress to veto decisions by the Immigration and Naturalization Service not to deport aliens. Kennedy and two other judges unanimously ruled that the “one-house veto” violated the Constitution’s separation of powers. (The Supreme Court later affirmed their ruling, in a seminal separation-of-powers decision.)

Kennedy’s opinion for the Ninth Circuit focused primarily on the dangers of Congress encroaching upon the president’s exclusive power to execute the laws, but he also examined the issue from the other direction, in terms of delegation and responsibility:

The concern for the autonomy of each branch is shown by a corollary of the separation doctrine, namely, the rule against undue delegation of powers. Just as the separation of powers prohibits the accumulation of too much power in one branch, the nondelegation doctrine prevents one branch from abrogating its authority in a wholesale and standardless manner.

As Kennedy explained, the separation of powers among the branches and the nondelegation doctrine ultimately serve two distinct interests: the “twin purposes” of “promoting governmental efficiency” and “preventing concentrations of power dangerous to liberty.”

Once elevated to the Supreme Court, Kennedy has returned time and time again to the role of the Constitution’s separation of powers as a structural protection for

liberty, just as he returned to the relationship between federalism and liberty. In *Public Citizen v. Department of Justice* (1989), a case asking whether Congress could pass statutes affecting the president’s power to nominate judges, Justice Kennedy’s concurring opinion opened with a strong defense of the separation of powers in service of liberty, quoting first Charles Pinckney and then Madison’s *Federalist Papers*:

“In a government, where the liberties of the people are to be preserved . . . , the executive, legislative and judicial, should ever be separate and distinct, and consist of parts, mutually forming a check upon each other.”

The Framers of our Government knew that the most precious of liberties could remain secure only if they created a structure of Government based on a permanent separation of powers. See, e.g., *The Federalist* Nos. 47-51 (J. Madison). Indeed, the Framers devoted almost the whole of their attention at the Constitutional Convention to the creation of a secure and enduring structure for the new Government. It remains one of the most vital functions of this Court to police with care the separation of the governing powers. That is so even when, as is the case here, no immediate threat to liberty is apparent. When structure fails, liberty is always in peril.

Justice Kennedy struck similar notes in his concurring opinion in the line item veto case, *Clinton v. City of New York* (1998) (“Liberty is always at stake when one or more of the branches seek to transgress the separation of powers”), and in his opinion for the Court in one of the Guantánamo detention cases, *Boumediene v. Bush* (2008) (“The Framers’ inherent distrust of governmental power was the driving force behind the constitutional plan that allocated powers among three independent branches. This design serves not only to make Government accountable but also to secure individual liberty”).

But on questions of Congress delegating power to agencies, Kennedy’s focus on liberty is most clearly pronounced in his opinion for the Court in *Gonzales v. Oregon* (2006). There the government argued that because the Controlled Substances Act (CSA) empowers the attorney general to regulate or prohibit the distribution of drugs, the attorney general could prohibit the distribution of drugs for physician-assisted suicide. But Justice Kennedy, writing for the Court majority, rejected the suggestion that the CSA’s grant of general regulatory power to the attorney general could be construed as empowering him to decide unilaterally the contentious issue of assisted suicide. The “idea that Congress gave the Attorney General such a broad and unusual authority through an implicit delegation,” Kennedy wrote for the Court, “is not sustainable.” Quoting key precedents on these themes, Kennedy stressed that Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.” The

Court will not casually affirm an agency's constitutionally controversial assertions of regulatory power, precisely because the Court is "confident that Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion."

When the issue of physician-assisted suicide had been "the subject of an 'earnest and profound debate' across the country," it strained the Court's credulity to suggest that Congress truly did (or could) simply hand the issue off for unilateral decision by the attorney general:

The Government, in the end, maintains that the prescription requirement delegates to a single Executive officer the power to effect a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality. The text and structure of the CSA show that Congress did not have this far-reaching intent to alter the federal-state balance and the congressional role in maintaining it.

Thus, Justice Kennedy and the Court struck down the attorney general's implementation of the act; if Congress truly wanted to empower the executive branch to decide the assisted-suicide question, then Congress would have to amend the statute and clearly command that policy.

As one might now suspect, this could be the point that Kennedy was pressing in the *Hobby Lobby* arguments. Abortion, including methods of contraception that induce early abortion, is among the most contentious political issues of our time—far more controversial than assisted suicide was when *Gonzales v. Oregon* came before the Court. Kennedy knows this better than anyone: He cowrote the opinion that reaffirmed *Roe v. Wade*'s basic right to abortion in its moment of greatest peril, and he wrote the opinion affirming Congress's power to prohibit partial-birth abortion. He and his colleagues are well aware of the "earnest and profound debate" surrounding the abortion issue; he's looked down upon the plaza before the courthouse and seen the protesters. And now he and his colleagues have been asked by the government to affirm that a single cabinet secretary can unilaterally decide that religious persons must pay for other people's contraceptives and abortifacients, or incur a tax for their refusal to pay, based on one modestly worded statute.

Perhaps Justice Kennedy's intended audience at oral argument was not so much the lawyers, or even the agency, but Congress and the general public: If this nation is going to erect a new program for funding people's access to abortifacients and contraceptives, a policy fraught with fundamental questions about religious liberty, then Congress must pass statutes more specific than merely providing for "minimum essential coverage." Perhaps Justice Kennedy means to say, as he quoted in *Gonzales*, that "Congress could not have intended to delegate a decision of such economic

and political significance to an agency in so cryptic a fashion"—all the more so when Congress also has passed a statute, the Religious Freedom Restoration Act, requiring the government to minimize burdens on religious liberty, not needlessly exacerbate them.

Whether or not this is what Justice Kennedy had in mind during the *Hobby Lobby* arguments—and he surely will make clear his position soon enough—we can expect the modern administrative state to raise many more questions of constitutional principle in the future. The establishment of the administrative state, in both the Progressive Era and the New Deal, raised challenging questions about constitutional structure and rights. We seem to find ourselves in a similar moment once again. The administrative state's vigorous growth, in both scope and intensity, has returned it to the center of constitutional debate.

So far, this has been seen most clearly in matters of federalism, as law professor Gillian Metzger noted in a 2008 article. In an era when the Supreme Court was largely unwilling "to impose significant constitutional limits on the substantive scope of Congress's regulatory powers," the same Court took steps to ensure "that the impact of challenged agency decisions on the states is considered." Perhaps Metzger's diagnosis of the Court's unwillingness to impose limits was too pessimistic, especially as seen in the Court's willingness to overturn the Affordable Care Act's encroachment upon state authority in the Medicaid expansion (by a 7-2 supermajority of the justices, no less). But Metzger and others are certainly on to something when they suggest that "administrative law may be becoming the home of a new federalism."

So, too, with the separation of powers. The Court has proven its willingness to strike down altogether statutory structures that violate the separation of powers, such as the Sarbanes-Oxley accounting reform law's attempt to create an "independent agency" within yet another "independent agency," which the Court struck down in 2010. And perhaps the Court will do something similar in *NLRB v. Noel Canning*, the challenge to President Obama's appointment of officers without Senate confirmation, now pending before the Court. But looking beyond such singular cases, the courts can also vindicate constitutional design simply in the way that they interpret statutes and review agencies' implementation of federal statutes—statutes such as the Affordable Care Act.

"What kind of constitutional structure do we have if the Congress can give an agency the power to grant or not grant a religious exemption based on what the agency determined?" Justice Kennedy asked the question; it falls now to him and his colleagues to answer it. ♦



'Gog,' starring Richard Egan (second from right) and Constance Dowling (1954)

Man vs. Machine

The limits (?) of artificial intelligence. BY JAMES C. BANKS

The failure to explore and monitor the threat [of dangerous artificial intelligence] is almost society-wide. But that failure does not . . . alter the fact that we will have just one chance to establish a positive coexistence with beings whose intelligence is greater than our own.

This is not just the closing paragraph of James Barrat's new manifesto; it is the overarching theme of this book. And when Barrat speaks of the threat of artificial intelligence, he wants you to know it is a matter of your life and death.

James C. Banks is a writer in New York.

Our Final Invention

Artificial Intelligence and the End of the Human Era

by James Barrat

Thomas Dunne, 336 pp., \$26.99

Barrat knows that we have heard all of this before, from Isaac Asimov and Arthur C. Clarke and James Cameron, but the foremost merit of *Our Final Invention* is that Barrat manages to distance himself credibly from the fantasists who have preceded him. This is not to say his argument is so persuasive that we should begin storing weapons and

resign ourselves to becoming the protagonists of an H.G. Wells novel. But it does mean he raises issues that deserve to be considered more than they are.

Barrat knows how hard this argument is to take seriously, and he tries to stave off the dismissive laughter it invites. For instance, he acknowledges that "entertainment has inoculated [artificial intelligence] from serious consideration in the not-so-entertaining category of catastrophic risks. For decades, getting wiped out by artificial intelligence . . . has been a staple of popular movies, science-fiction novels, and video games." The sort of apocalyptic scenarios Barrat fears do

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not sound much like a plotline from one of the *Terminator* films. The end of the world he describes comes with something that sounds closer to a whimper than a bang.

Barrat is more concerned with artificial intelligence than humanoid robots, and, unlike so many of the novels and movies that he believes inoculate us to the real threat, he believes that artificial intelligence is more worrisome insofar as it is unlike human intelligence:

Machines are amoral, and it is dangerous to think otherwise. Unlike our intelligence, machine-based superintelligence will not evolve in an ecosystem in which empathy is rewarded and passed on to subsequent generations.

The problem with machines is not that they are broadly malignant but that they are not specifically benign. Barrat has a few examples of how extremely intelligent, amoral machines might pose a threat. What happens if, for instance, an artificially intelligent machine with the ability to self-replicate does not know when to stop itself and consumes our natural resources in its drive to reproduce? Questions like this should concern us; but there is a problem with Barrat's argument, stemming from the tricky business of defining intelligence itself.

At one point, Barrat picks up the *New Oxford American Dictionary* to help him define "artificial intelligence," but even when he talks about some of the symptoms of intelligence—such as the ability to self-program, or to learn from one's mistakes—the systems that Barrat fears always seem to have the superficial appearance of intelligence without actually being intelligent. Artificial intelligence might be able to calculate pi to more decimal points than humans are ever capable of doing; but this is intelligence that is still mediated through human experience and human programming, for human purposes.

Barrat comes close to grasping this point a number of times, without ever putting his finger on it. He asks Richard Granger, an expert in "computational neuroscience," whether a computer would ever be able to develop intel-

ligence on the same level as a human, considering that a computer has no senses. It is a good question, but one for which Richard Granger does not have much of an answer. His response is that Helen Keller managed to develop a human level of intelligence—an answer that does not take into account the fact that those lacking one or more of the senses can compensate through the senses they do have.

And whether our senses are limited or not, they still serve as the medium through which we experience, evaluate, and learn to make rational decisions

Artificial intelligence might be able to calculate pi to more decimal points than humans are ever capable of doing; but this is intelligence that is still mediated through human experience and human programming, for human purposes.

about the world. A machine could conceivably have sensors for picking up objects or avoiding perilous situations, but it will only know to avoid contact with a hot oven to the extent that a human mind has dictated that it will do so.

Barrat and other techno-critics might argue that this does not matter: After all, a steamroller does not need an IQ to run over you; a nuclear weapon does not need to think to explode. But it matters because, as long as we are unable to invent a fully self-conscious machine, machines will always have to borrow their consciousness or drive from humans. Toward the end of this book, Barrat mentions Moravec's Paradox: Tasks

that humans find easy robots tend to find difficult, whereas tasks that humans find difficult robots tend to find easy. Barrat sees this as evidence of how imperiled we are. If computers can easily acquire reasoning capabilities, how are we to defend ourselves? But it is the smaller things—adaptability, creativity, the ability to think on one's feet and reconfigure one's environment for survival—that are at the root of human success.

Nonetheless, if Barrat does not always make a convincing case, his predictions are preferable to those of some of the techno-utopians he interviews. If there is anything more disturbing than the prospect of being destroyed by a self-replicating computer that feeds itself by harvesting carbon, it is the visions of people like Ray Kurzweil, a man who "plans to fend off death" through dieting and exercise "until technology finds a cure he's certain will come."

Immortality has long been a pursuit of the "transhumanist" movement, but there is nothing immortal about the sort of goal that Kurzweil is setting for humanity. It may be nonagenarian, and it may hold the promise of indefinite, if not eternal, life. But in the transhumanist world that Kurzweil and others dream of, we would still be fed with the same food, killed by the same weapons, subject to the same diseases, and warmed and cooled by the same winter and summer.

In such a world—a world in which people may have the ability to live forever but are not guaranteed to do so—would anyone muster the courage to set foot outside his front door? Would people still desire to raise children if they had no intention of leaving any legacy to them? Or would we become a society of old minds trapped in young bodies with the desire to achieve no more wisdom than will preserve our bodies for another year?

Time will tell. But, as Aldous Huxley's savage-hero from *Brave New World* points out, a world without adversity makes virtue irrelevant. It is also a world in which humans could survive, but in which their humanity would not last an hour. ♦

Citizen Ravitch

The good, the bad, and the future of New York.

BY FRED SIEGEL



Richard Ravitch, Edward Koch, Michael Bloomberg (2009)

Richard Ravitch is an extraordinary man. He's an intelligent, indefatigable, honest, honorable, accessible, and personable fellow who, for 45 years, has played a key role in rescuing New York's jerrybuilt fiscal structure from its own failings. Yes, that's my personal opinion of the man who has just written this autobiography, aptly titled *So Much to Do*; but it's an opinion broadly shared by New Yorkers caught up in the political life of the city and state over nearly half of a century.

The scion of a well-to-do real estate family, and educated at Columbia and Yale, Ravitch served his public sector apprenticeship in the 1960s as a staffer on the House Government Operations

Fred Siegel, a scholar in residence at St. Francis College in Brooklyn and senior fellow at the Manhattan Institute, is the author, most recently, of The Revolt Against the Masses: How Liberalism Has Undermined the Middle Class.

So Much to Do
*A Full Life of Business, Politics,
 and Confronting Fiscal Crises*
 by Richard Ravitch
 PublicAffairs, 280 pp., \$26.99

Committee and a Johnson appointee to the United States Commission on Urban Problems, where his friendship with the civil rights leader and social democrat Bayard Rustin informed his outlook. On the private sector side, he and a cousin ran the family business, HRH Construction, which was responsible (after years of wrangling with the New York City government over zoning and permits) for the award-winning Waterside Plaza housing project: four towers built on more than 2,000 pylons sunk into the East River just south of the United Nations buildings.

Waterside Plaza was financed in the early 1970s in part by Mitchell-Lama moral-obligation bonds, a program developed by New York State to

encourage the construction of middle-class housing by circumventing the limits on the state's constitutionally authorized borrowing authority. The project also received a federal subvention and support from the newly created New York City Housing Development Corporation, the brainchild of the then-30-year-old Ravitch and Mayor John Lindsay. For Ravitch, Waterside Plaza was an education in the complexities of public/private partnerships.

Just a few years later, a newly elected Governor Hugh Carey turned to Ravitch to salvage the state Urban Development Corporation, which had gone deeply into debt by financing subsidized housing projects through moral-obligation bonds that similarly circumvented the need for public approval. But not even Ravitch could save the UDC, which went bankrupt. The same banks that refused loans to the UDC precipitated the 1975 fiscal crisis when they refused to refinance the mountain of debt that had been piled up by mayors Lindsay and Abraham Beame to subsidize social programs and low-income housing and to increase pay for the city's public sector workers, who had grown from 250,000 to 330,000 during Lindsay's second term.

When the bankers balked at financing the city's out-of-control short-term debt, Ravitch played an important role in salvaging the situation. His plan for reviving the state Housing Development Corporation became the model for the Municipal Assistance Corporation, which reorganized the city's debt so it could gain federal guarantees. And then, after arduous efforts, Ravitch convinced his fellow social democrat Albert Shanker, head of the United Federation of Teachers and a family friend, to join with the major bankers and other unions in an effort to buy the city's restructured debt. Aided by the inflation of the late 1970s, which reduced the costs of the city's obligations, New York slowly backed away from the precipice.

In 1979, Governor Carey called on Ravitch again, this time to rescue the city's fiscally failing Metropolitan Transit Authority. Relying on

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his extraordinary negotiating skills, Ravitch again delivered—but at the cost of introducing a regional sales tax. In 2009, he rescued the MTA yet again, creating a regional payroll tax in a state with 8 of the 10 highest county property taxes in the country.

In 1985, Ravitch, described by the late Mayor Edward Koch as a “renaissance man,” brought the Bowery Savings Bank back from the brink of bankruptcy, but failed to connect with the public as a mayoral candidate. In his last term-and-a-half in office, Koch recapitulated Lindsay and Beame by doubling the city budget. In 1989, when Koch was running for a fourth term, it should have been an ideal setting for a Ravitch mayoral run. But Ravitch was hampered by his integrity—and his inability to schmooze-up the man in the street. Asked if he would ride the crime-ridden subways he had rescued a decade earlier if he didn’t have to, he replied, “No way.” He ended up with a pile of thoughtful policy statements and 4 percent of the vote.

Richard Ravitch’s last major role in New York came when “Client 9,” the hypocritical and heinous Eliot Spitzer, was forced to resign as governor in 2008 and his successor, David Paterson, also caught up in a series of scandals, was forced (on dubious legal authority) to name Ravitch as his lieutenant governor. Ravitch, who was described as the only adult in Albany, held out the promise of restoring confidence in state government. But despite his best efforts to aid the state, which was hard hit by the national financial crisis of 2008, Lieutenant Governor Ravitch was ignored by Governor Paterson, who limped through the remainder of the term won by Spitzer.

Ravitch’s experience in Albany led him to question the viability of democracy when powerful interest groups, such as the public-sector unions, dominate state government. He was disturbed by the “tone” of public complaints about government, “which are expressed in a resigned, condescending, dismissive, or outraged [voice] that would be more appropriate from the resentful subjects of an authoritarian regime than from citizens of a

democracy.” The “amelioration” of these attitudes, he insists, “begins with a respect for the political process.”

For all his strengths, Ravitch is short on introspection. He seems not to have noticed that the informal mechanisms that kept the state on kilter have eroded since the 1975 fiscal crisis. Business and labor were once evenly matched; but costs, crime, and hyper-regulation sent businesses scurrying to sunnier climes so that the state increasingly came to depend on New York City’s financial sector and punishing local taxes to finance the demands of the public-sector unions who dominate the legislature. Almost everyone in the business of government did well; it was the workaday citizenry that was suffering.

Ravitch also seems not to have noticed the deep decline of New York’s upstate economy. Upstate fiscal conservatism had once acted as a check on the city’s unrestrained push for more spending, regardless of results. But here, too, the balance that Ravitch had taken for granted 40 years earlier has collapsed.

And if government seems less and less accountable to the people, that is probably because sitting members of the legislature win elections with the tiny turnout of party primaries and are rarely challenged in general elections. At the same time, New York’s innumerable public authorities have been able to issue debt without public approval. The same authorities that made Ravitch’s Waterside project possible were (like almost all in state government) in business for themselves. The corporatism that might have once seemed benign has left politics to professionals with a personal, full-time interest in an overweening government that barely needs public approval.

There is no mystery to declining voter turnout and public cynicism: It’s a rational response to the system Richard Ravitch helped shape, in which public/private partnerships, sometimes descending into crony capitalism, call most of the shots, thus sidelining ordinary voters. Why these arrangements deserve “the public’s respect,” as Ravitch suggests, is something that this talented man seems unable to answer. ♦

BCA

Imperial Transition

Sailing to Byzantium, with a push from the Vandals.

BY RICHARD TADA

An economic miracle occurred in the fifth century: a leader was able to cut taxes and balance the budget at the same time. This improbable feat was pulled off by Anastasius, emperor of the surviving eastern half of the Roman Empire based in Constantinople. Anastasius, who ruled from 491 to 518 A.D., eliminated the *collatio lustralis*, a tax on traders and artisans, and reaped extra publicity benefits by staging a public burning of tax records in the city’s hippodrome.

Richard Tada is a writer in Seattle.

From Rome to Byzantium

AD 363 to 565

The Transformation of Ancient Rome

by A.D. Lee

Edinburgh, 360 pp., \$48

Anastasius made up part of the resulting shortfall by drawing on funds intended for the imperial household; he also economized by cutting off annual subsidy payments to the region of Isauria in southern Asia Minor. He could do so with impunity because Isauria had rebelled early in his reign and been defeated; he had no further need to buy

its support. Modern political lobbies are rarely defeated so conclusively, which is why we are unlikely to witness a repetition of Anastasius's achievement.

A chapter of *From Rome to Byzantium*, which covers the complex period involving the downfall of the Roman Empire in the West and its survival in the East, is devoted to Anastasius's pivotal reign. A.D. Lee, a classics professor at the University of Nottingham, has written a book that manages to be both accessible and comprehensive, giving thorough coverage to economic and religious topics alongside political history.

It opens after the implementation of critical changes wrought by Emperor Constantine: the legalization and imperial support of Christianity, along with the establishment of Constantinople as a power center in the East. Rome itself remained a large and important city—modern estimates of its fourth-century population range from 500,000 to one million—though the emperors now based themselves closer to the threatened frontiers and rarely visited the city.

The frontier was breached when a wave of Goths—initially refugees driven by the Huns to their rear—crossed the Danube into the Balkans and crushed a Roman Army at the Battle of Adrianople in 378. Four years later, Emperor Theodosius, hamstrung by the heavy losses at Adrianople, made an agreement with the Goths, allowing them to settle on Roman territory under their own leaders in exchange for providing military service. Once established within the frontiers, barbarian influence spread like a fungus, even pushing tendrils into the army itself. (The one weakness of *From Rome to Byzantium* is a relative paucity of information on the Roman Army as an institution, in particular on its barbarization in the West.)

The well-known Gothic sack of Rome in 410 was an act of enormous symbolic importance, but it was only part of the decades-long disintegration of the western empire. Ambitious generals of varying abilities became the leading figures in the West, supplanting the emperors until the end

came in 476. The last figurehead emperor was deposed by one Odoacer, a general in a “Roman” army made up mostly of barbarians.

It was otherwise in the East. The two halves of the empire had been governed separately from 364, when emperors (and brothers) Valentinian and Valens divided up the domain between them. It was like bisecting an ocean liner, one half of which sank while the other half, astonishingly, remained afloat. The East's geographical advantages have been cited



'Barberini's Ivory' (sixth century)

to explain its survival: The western emperor had longer frontiers to guard, along the Rhine and much of the Danube. Lee grants the importance of geography, and cites another fortunate circumstance: Rome's great power rival to the east, Sasanian Persia, was preoccupied with its own troubles during most of the fifth century, freeing Constantinople from worrying about its eastern frontier.

But Lee also implies that better leadership kept the East afloat. In the West, the military command structure was centralized, which enabled ambitious generals to amass power and to take charge of both military and civilian affairs. Thus, Aetius, the general who became the effective ruler of the West from 432 to 454, fought battles against

Huns and Goths, but also, at one point, found himself dealing with a possibly less exciting matter: regulating the pork supply for the city of Rome.

By contrast, the East maintained five separate field armies. A general in charge of one army could find his ascent checked by the commanders of one or more of the others. Even when a general made himself influential at court, he found that the eastern emperors were less pliable than their western counterparts. Emperor Leo, who reigned from 457 until 474, feared that his general, Aspar, was planning to supplant him and had the general and his sons murdered in 471 during their visit to the palace. As Lee notes, this action “gained Leo the unwelcome epithet of ‘the butcher,’” but it also helped to ensure that civilian rule continued in the East. Anastasius could not have carried out his economic reforms later in the century without the assistance of several talented civilian officials.

During the fifth century, the East was secure enough to throw lifelines to the floundering West, including contributing troops to no fewer than three attempts to halt the march of the Vandals, the most serious threat to the western empire. The Vandals crossed the Rhine at the end of 406. After passing through Gaul and Spain, they made their journey intercontinental by invading North Africa in 429 and taking Carthage a decade later. Their takeover of North Africa knocked the props out from beneath the western empire; the provinces there were wealthy and had provided the West with much of its revenue.

All three attempts to halt the Vandals failed. The last, mounted in 468 by the combined forces of East and West, was a fiasco. It culminated with the Vandals using fireships to ravage the imperial fleet. The financial cost to the eastern empire probably exceeded its entire revenues for a year. This disaster, in Lee's words, “effectively seal[ed] the fate of the western empire.” Furthermore, “it left deep psychological scars in the memories of the elite in Constantinople for many years to come,” ensuring

that the Vandals were left alone for decades thereafter.

“Byzantium” is a term of modern scholarship. Some authorities see the reign of the great eastern emperor Justinian (527-565) as marking the point at which the Roman Empire had changed sufficiently (most strikingly by way of Christianization) to deserve the new appellation. Justinian finally brought Vandal rule to an end. A surprisingly swift and decisive campaign in 533-34 brought North Africa back under the empire, where it remained until the Islamic conquests of the late seventh century. Justinian attempted to duplicate the feat by retaking Italy from the Goths, with less success: A fresh wave of invaders undid most of his conquests in 568, a mere three years after his death.

Justinian continued Anastasius’s tradition of able administration. His reforms—which he liked to portray as a return to traditional Roman practices—were well-considered and, at times, innovative. Justinian streamlined the clunky provincial administrative machinery. In one striking action, he unified two noncontiguous sets of provinces under a single official: those on the bleak Lower Danube (where army units were stationed in defense of the frontier) and those in the prosperous and productive Aegean. The responsibility of this official, the *quaestor exercitus*, was to see to it that supplies for the army units were transferred from the latter region to the former.

A.D. Lee defends Justinian from his numerous detractors, both ancient and modern. Many commentators have focused on the prolonged and destructive war in Italy, occasioned by tough Gothic resistance, as well as on the devastating plague that struck the empire in the 540s and renewed trouble on the frontier with Persia. But Lee regards the failure in Italy as counterbalanced by the recovery of North Africa (which eventually contributed to the empire’s coffers) and the overall prosperity of the eastern Mediterranean. While Justinian proved unable to reunite the Roman Empire, he did well enough by its surviving eastern half. ♦

BCA

Virginia Inflamed

Bacon’s Rebellion: power grab or principled uprising?

BY MARK TOOLEY

A century before the Declaration of Independence, Virginia colonists, mostly from the frontier backcountry, rebelled against their imperious royal governor and his privileged Tidewater elites, forcing him into exile and burning the capital of Jamestown. Their revolution collapsed when their young, charismatic chieftain, Nathaniel Bacon, himself a Cambridge-educated member of the gentry, was consumed by the body lice that had compelled the daily burning of his shirts.

His gloating foe, Governor William Berkeley, turned to poetry:

*Bacon is Dead I am sorry at my hart
that Lice and Flux should take the
hangmans part.*

Berkeley still had plenty of work for the hangman, quickly executing about 23 of Bacon’s lieutenants before royal commissioners arrived. “That old fool has hanged more men in that naked country than I did for the murder of my father,” Charles II said of Berkeley, whom his father had appointed more than 35 years earlier.

With such violent, impetuous characters, no history of Bacon’s Rebellion is likely to bore, and *Tales from a Revolution* doesn’t disappoint. But it ambitiously aims to connect Virginia’s brief civil war to a larger transatlantic narrative of Protestant fears that Roman Catholics were plotting to retake England, culminating with the 1688 overthrow of Charles II’s Catholic brother, James II. This interpretation

Mark Tooley, president of the Institute on Religion and Democracy, is the author of Methodism and Politics in the Twentieth Century.

Tales from a Revolution
*Bacon’s Rebellion and the
Transformation of Early America*
by James Rice
Oxford, 280 pp., \$14.95

intrigues but probably overreaches for this brief volume, which has Bacon’s death at midstory.

The duel between the elderly but robust Berkeley, older than Virginia itself, and the precocious Bacon, born after Berkeley had become governor, is sufficient unto itself. Its high point was their 1676 confrontation outside the state house in Jamestown.

“God damne my blood, I came for a Commission and a Commission I will have,” Bacon demanded, with hundreds of armed supporters wanting their chief ordained Virginia’s warlord against the Indians. Berkeley, with Virginia’s legislators behind him, was an even greater dramatist: “Here! Shoot me!” he exclaimed, ripping open his shirt. “Foregod, fair Mark, shoot!” A frightened legislator, lacking the governor’s resolve, dropped his handkerchief in surrender, compelling Berkeley to accede, temporarily.

Having ruled Virginia during the last great Indian uprising of 1644, which killed 20 percent of the colony, and defeated the ancient uncle of the long-since-departed Pocahontas, Berkeley was no softie. Bacon, to him, must have initially seemed a trifle. But the youthful rebel, soaring across Virginia history like a comet, in only a few months upended Great Britain’s largest and wealthiest colony with his audacity and mystical appeal to aggrieved backwoodsmen.

Berkeley, purportedly indifferent to those backwoodsmen, had maintained

an approximate peace with the neighboring tribes, from which he and other Tidewater grandees profited, especially as a result of the Indian slaves that were sold to them by rival tribes. Occasional violence was managed. The ancestors of George Washington and George Mason, leading militia, provoked a larger conflict by mistakenly killing friendly tribesmen in reprisal for killings likely by others. The frontier was aflame.

Unlike most wealthy planters, Nathaniel Bacon, who served on the governor's privy council, lived near the frontier, near present-day Richmond. Indians killed his overseer, stirring his indignation and bonding him to his commoner neighbors, who acclaimed him their general. They, like many Virginians, resented Berkeley's perceived strategic passivity, which preferred forts to aggressive warfare. Bacon led his new army into the wilds, persuading a friendly tribe to destroy an enemy tribe, his men watching as tribesmen tortured their tribal captives by "running fyer brands up their bodys and the like." An apparent dispute over spoils then erupted, with Bacon destroying his putative allies.

Bacon believed that all Indians, even purported allies, had to be expunged from Virginia if the colonists, especially his vulnerable frontier followers, were to be safe. Berkeley was appalled by what he viewed as Bacon's insolence and insanity. Bacon's initial appearance in Jamestown included a faux reconciliation, with Bacon pledging allegiance and Berkeley exclaiming before his government, "If there be joy in the presence of the angels over one sinner that repenteth, there is joy now, for we have a penitent sinner come before us." As Bacon knelt before him, Berkeley repeated three times, ceremonially: "God forgive you, I forgive you . . ."

The farce collapsed when Bacon extorted his commission from Berkeley at gunpoint. For months the rebel, who purportedly wanted to safeguard the frontier, had been battling friendly Indians, the governor, and any Virginian hesitant to support

him. Many were browbeaten into signing an oath to Bacon, making them complicit in rebellion. Berkeley escaped to the Eastern Shore, where he awaited British regulars and gradually gained control of Virginia's waterways with his ships.

Bacon issued stirring, grandiose proclamations, some faintly foreshadowing the revolutionary documents of a hundred years later. And although he had claimed loyalty to the crown in

they recognized the carriage driver Berkeley had assigned them as the hangman who executed Bacon's associates. Now in his mid-70s, Berkeley returned to London to argue his case but died before he had his royal audience. His successor moved Virginia's capital to Williamsburg, named for the Protestant monarch who overthrew the Catholic James II.

Author James Rice highlights an anonymous colonial appeal to Britain that described Bacon's revolt as the first act against a plot by Berkeley and Lord Baltimore, neighboring Maryland's Catholic proprietor, to "drive us Protestants to Purgatory." This "Complaint from Heaven" claimed that the papists wished to betray America, with Indian help, to French Canada's Jesuits: "Are wee Rebels because wee will not submit to their arbitrary government and entangle our innocent posterity under their tyrannical yoke of papacy?"

Proto-Bacons in Maryland overthrew Lord Baltimore in 1688, hailing England's new Protestant regime, whose victory vindicated Bacon, since he had fought the Stuart royal governor. So maybe Bacon was an early Whig, or Oliver Cromwell lite. Or maybe Bacon foreshadowed Southern white populism, which opposed white elites and established a racial hierarchy that privileged poor whites at the expense of Indians and blacks. After Bacon, Virginia's tribes were vanquished, and black slaves replaced Indian slaves and white indentured servants.

So was Nathaniel Bacon a Protestant triumphalist, a white populist, or an early forerunner of American independence? Actually, he was mostly an adept opportunist who briefly but fantastically exploited his time and place. Governor Berkeley recalled that Bacon had burned Jamestown's church with "his owne irreligious hands." Consequently, the Almighty, recalling Bacon's oath of "God damme my Blood," had "so infected his blood that it bred lice in incredible number that for twenty dayes he never washt his shirts but burned them." ♦



Governor Berkeley addressing the rebels

defying an ostensibly corrupt governor, he privately pondered an independent republic supported by the Dutch. He burned Jamestown to deprive Berkeley and British troops of a base.

After months of military campaigning, Bacon was plagued by "swarms of Vermine . . . bred in his body" and a bloody flux from his bowels. A clergyman whom Bacon had previously warned to "preach in the Church, not in the Camp" unsuccessfully tried to comfort him as he died. He was not yet 30.

Berkeley defeated Bacon's followers and expected acclaim from the visiting royal commissioners. Instead, they faulted the governor for misrule and were further enraged when

Prophet of Ukraine

The Russian novelist who's seen it all coming.

BY CATHY YOUNG

Last month, as Russia began its takeover of Crimea and Cold War II hung in the air, about a hundred people gathered at Columbia's Harriman Institute to hear an 81-year-old Russian visitor whom some credit with uncanny prophetic powers. Vladimir Voinovich, one of the great Soviet-era dissident writers, has several novels and nonfiction books to his name, not to mention numerous short stories and essays. But without a doubt, the one work about which he is asked most is his 1986 novel *Moscow 2042*. In this futuristic satire, the time-traveling narrator finds himself in a Russian state whose ideology is a fantastic hybrid of communism and Orthodox Christianity—and whose supreme ruler, revered as “The Genialissimo,” was once, like Vladimir Putin, a KGB officer stationed in East Germany.

Not surprisingly, *Moscow 2042* came up often during the March event, with Voinovich jokingly wondering if the book “exerted a magnetic pull on history so that it began to move toward that future” or if “the powers that be had an urge to bring history in line with my story.”

History has taken Voinovich's own life and career in some strange directions. The son of a former Gulag prisoner, he came of age as a writer during

the post-Stalin “thaw.” His big break came in 1960, when he wrote the lyrics for a song about cosmonauts that became a big Soviet hit—thanks, in part, to the fact that it was quoted by Nikita Khrushchev. His fiction, not overly political but unsparing in its portrayal

of Soviet realities, began to appear in *Novy Mir*, the distinguished literary magazine known for politically edgy fare, including the work of Aleksandr Solzhenitsyn.

By the time Voinovich had finished his novel *The Life and Extraordinary Adventures of Private Ivan Chonkin*, it was 1969 and the thaw was long over—and, in any case, *Chonkin* broke too many taboos for even the most liberal

Soviet times. The novel, which opens just before the German invasion of the Soviet Union in 1941 and follows the travails of a bumbling Red Army recruit stranded in a village where he's been left to guard a broken airplane, not only ruthlessly satirizes Soviet life under Stalin but extends its irreverence to the mystique of the Great Patriotic War—and strongly hints at the moral equivalence of Stalinism and Nazism. In one memorable scene, a captain in the secret police—mistaken for a German and captured by Soviet soldiers in a black comedy of errors that leads him, in turn, to think he is in German hands—tries to curry favor with his captors by saying that he works for the “*Russisch Gestapo*.”

Rejected by *Novy Mir*, the novel circulated in *samizdat*. It was also smuggled abroad and published by a

Russian emigré magazine in 1974, then translated into English and other languages. While *Chonkin* gained Voinovich international acclaim—a *New York Times* review likened it to *The Good Soldier Švejk* and *Catch-22*—it was also the final nail in the coffin of Voinovich's career in the Soviet Union. He was kicked out of the Writers' Union, banned from print, and subjected to KGB harassment that ranged from the shutoff of phone service to possible attempted murder.

Undeterred, he participated in human-rights activism, published a mordant memoir of his battle for a new apartment (*The Ivankiad*, 1976), and worked on a *Chonkin* sequel, *Pretender to the Throne*, which appeared in 1979. Shortly afterwards, the Kremlin decided that Voinovich had tried its patience once too often: In 1980, he was deported to West Germany with his family.

Of course, history's next plot twist for Voinovich was stranger than anything in his fiction. The winds of *glasnost* blew, and Voinovich's Soviet citizenship, revoked in 1981, was restored in 1990—only a year before those same winds blew the house down. He came home to a warm reception, to see his works published and adapted for television and stage; in 2000, he received the State Prize of the Russian Federation for his novel *Monumental Propaganda*, a *Chonkin* spinoff focusing on a minor character from *Pretender to the Throne*, diehard Stalinist Aglaya Revkina.

Even then, however, Vladimir Putin's neo-authoritarian Russia was on the rise, with its renewed pride in Soviet “achievements” and its embrace of religion-tinted nationalism—which Voinovich had disliked even as a dissident viewpoint. Within a decade, it meant a new fall into disfavor for the former exile whose outspokenness was not blunted by age. On his 80th birthday in 2012, a tribute to his life and work scheduled to air on Russia's main cultural TV channel, Kultura, was abruptly yanked, with no explanation given. Or needed.

At the same time, Voinovich's star has dimmed somewhat in the West, perhaps because dissident Russian writers have lost their erstwhile luster. His 2007 novel



Vladimir Voinovich (2010)

Cathy Young is a columnist for Newsday and Real Clear Politics and a contributing editor to Reason magazine.

The Displaced Person, the long-delayed final installment in the *Chonkin* trilogy, had to wait five years for publication in English and garnered little notice, unlike his earlier books. His 2010 autobiography, *Self-Portrait: The Story of My Life*, is still unavailable in English. Too bad. Voinovich, whose earthy realism is leavened with a keen sense of the surreal and the absurd, may be the best fictional chronicler of Soviet and post-Soviet Russia.

The *Chonkin* trilogy, whose conclusion spans decades and takes its hapless hero to the United States, where he finds unexpected good fortune (before briefly going back to his bedraggled native land in the Gorbachev years), is a particularly rich 20th-century saga, a tale of human comedy and drama amidst the inhumanity of totalitarianism and war. It has star-crossed lovers, Chonkin and his village girlfriend Nyura, whose romance can have, at best, a bittersweet ending; it has political intrigue, in which the most paranoid nightmares can come true; and it has a vast array of major and minor characters who, whether sympathetic, loathsome, or somewhere in between, have distinct and vivid personalities.

Voinovich's boundless invention creates darkly hilarious scenes (a female NKVD worker trains her preteen son for a future career by playing the suspect in mock interrogations in which he binds her hands and shines a bright lamp in her face) that, however bizarre, are no more than a match for the realities of that age. Even his forays into outright fantasy—a subplot in *The Displaced Person* reveals the carefully guarded secret that Stalin was the unnatural offspring of man and mare—fit effortlessly into the realistic narrative. In an acerbic aside, Voinovich notes that, far-fetched though this version of Stalin's parentage may be, "the author finds himself overwhelmed by even greater doubts when he wonders how such a monster could possibly have been produced by an ordinary human mother."

Monumental Propaganda completes the epic, pulling off the difficult feat of following Russia's journey from Stalin to Boris Yeltsin through the eyes of a

character with, frankly, odious views. Aglaya is a fanatical Communist who manages to be both repugnant and sympathetic. She worships Stalin so devoutly that, when her town's statue is taken down as part of Khrushchev's de-Stalinization, she brings it to her apartment—where it stands until it topples and kills her (symbolism intended). The book ends with an eerie moment in which the narrator passes by the empty pedestal where Aglaya's idol once stood and thinks he sees a figure forming on it in the fog, "grinning and waving with its raised right hand."

Written on the cusp of Putin's ascendancy, these words, like parts of *Moscow 2042*, feel uncannily prophetic. It is an ironic role for Voinovich, who has always frowned on the tendency of some Russian writers—Solzhenitsyn, for example, a frequent target of his criticism—to assume a prophet's mission. Speaking to his New York audience, he acknowledged that the cultural status of the writer in Russia,

once seen as an intrepid truth-teller and a source of moral authority, has waned as society has gained more freedom. (He also stressed that he sees it as a worthwhile tradeoff.)

Yet, considering the latest events in the country to which he would soon be going home, Voinovich wondered if things might change: "If Russia becomes a complete police state, then a writer might become heroic again, and interest in literature will grow; I hope that doesn't happen."

Though even now, everything old in Russia is new enough to make Voinovich a very relevant guide to both past and present. And Voinovich is still busy: In December he published *Tribunal*, a modernized rewrite of his 30-year-old play spoofing Soviet political trials. He is writing a longer work as well, and although he remains tight-lipped about the subject, he does say that if Russia continues on its present course, "I'll have to write another book: *Moscow 2092*." ♦



At the Meh-vies

Nice enough, and all that, but worth the trouble?

BY JOHN PODHORETZ

There's a new movie called *Draft Day* you're almost certainly not going to see in a theater if you didn't go see it during its first weekend—because if you didn't, it won't be around much longer. Twenty-five years ago, *Draft Day* might have been a hit. Its headline performer, Kevin Costner, was the biggest star in America around then, after all. And Costner, who is now almost 60 but could pass for 45 here, not only remains the best-looking American since Gary Cooper, but still shares Cooper's weirdly charming woodenness. These

John Podhoretz, editor of Commentary, is THE WEEKLY STANDARD's movie critic.

Draft Day

Directed by Ivan Reitman



days, Costner's age could have helped *Draft Day* find its audience, because aging boomers do go en masse to the movies every now and then when there is fare designed for them.

Not this time. *Draft Day* tanked.

The movie follows Kevin Costner, playing the general manager of the Cleveland Browns football team, as he maneuvers his way through the day of the college draft. In a moment of weakness, he makes a bad deal for the No. 1 draft choice—a deal that destroys



Kevin Costner, Jennifer Garner

his team's future prospects and goes against his own gut. He has to turn it all around in just a few hours, by the time the closing credits roll. Oh, and his girlfriend (Jennifer Garner) is having a baby, and his father just died.

Draft Day's not great, by any means, but it's diverting enough, with some spiffy camera tricks here and there. But there's a good reason people didn't go to see it, which is this: Why should they?

There's simply no market left for any movie whose audience figures it's going to be just okay. I'm talking about the sort of movie people used to go to see because that's just one of the things they did in the course of an ordinary week—go to the movies. Under those conditions, standards weren't all that high, and movies that were neither awful nor amazing were acceptable. You could be sure of a decent scene or two, some good music, some new actor who catches your eye (in *Draft Day* that would be Griffin Newman, who does fresh and amusing work as Costner's nervous intern).

People went to the movies for the pleasure of going out. I mean, leaving

the house, getting in the car, going to the theater, buying the tickets, getting the popcorn and soda, running into friends in the lobby, settling into the seats, complaining about the seats, holding hands as the lights went down. We paid for the pleasure of being acted upon, of being entertained while we sat still. In the age of radio, or of only three TV channels, when there weren't that many decent restaurants, and movies and babysitters alike only cost a few bucks an hour, movies were an unbeatable and reasonable diversion.

No longer. Ticket prices are up nearly 25 percent from what they were in 1999, even accounting for inflation. It's very difficult to track the inflationary increase in concession stand sales, but by *Gizmodo's* calculation, popcorn costs an astounding 666 percent more in 2009 than it did in 1929. All in all, that's a lot of money to pay for the joys of being a spectator if you know you're not going to be wowed.

And given the fact that almost every household has already invested in a high-quality big-screen television, and

has high monthly sunk costs in cable or satellite dish and Internet service, Americans now reasonably believe they can get entertainment superior to what is on offer at the multiplex effectively for free at home.

None of that is news, of course, but the acceleration of the trend is dizzying. A flat-screen TV that cost \$6,000 a decade ago costs \$500 now, and it offers direct Internet access. Netflix only introduced streaming video on-demand in 2007. The iPad, the greatest personal-entertainment device ever invented, was first introduced to the public in April 2010.

Over that same period, Hollywood's only response to the wholesale theft of its audience by the home market has been its often crude and unsatisfying deployment of 3D—which it has used largely as a way of jacking up ticket prices rather than enhancing the already expensive experience of going to a movie theater.

The disastrous release of *Draft Day* is yet another indication that we are in the final stages of moviegoing as a definable cultural act. ♦

Kathleen Sebelius, who presided over the catastrophic rollout of the HealthCare.gov website last fall, is said to be weighing a run for the Kansas Senate seat.

—News item

PARODY

